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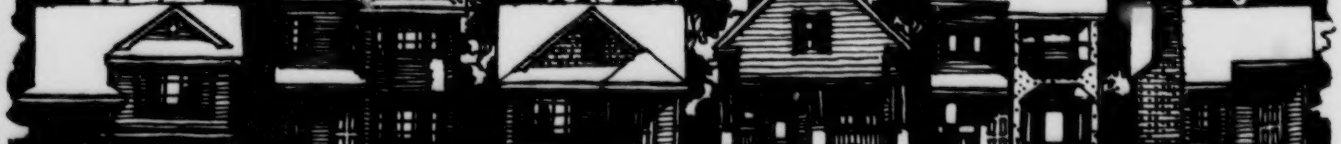

CONDOMINIUM MANAGEMENT PROCEDURES

September 1987

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PREFACE

This manual of condominium management procedures was developed from papers presented at the First Alberta Condominium Conference May 1 - 3, 1987. It is intended to assist condominium owners and boards of managers in understanding the attributes and management of condominiums.

The author of this report wishes to acknowledge the assistance of many volunteers from the Canadian Condominium Institute for the time and effort expended to ensure the First Alberta Condominium Conference would be a success. The Conference is the first of its kind to be held in Canada outside of the Province of Ontario.

Thanks are also expressed to the delegates who registered to attend the Conference, whose number exceeds that of the last "National Condominium Conference" held in October, 1986.

TABLE OF CONTENTS

1.0 INTRODUCTION 1

2.0 GLOSSARY OF TERMS 3

3.0 BOARD MEMBER'S PERSPECTIVE 17

3.1 Introduction 17
3.2 What We've Taken On-A Quick and Dirty Overview 18
3.3 Tools for Control 22

4.0 RUNNING EFFECTIVE CONDOMINIUM MEETINGS 27

4.1 How a Meeting Is Run 27
4.2 Everything You Always Wanted to Know About A Condominium Meeting and Board Meeting 31
4.3 Conducting Effective Meetings 50

5.0 BUDGETING AND FINANCIAL CONTROL 60

5.1 Budgeting 60
5.2 Types of Budgets 63

5.3 Budget Period 65
5.4 Reserve Fund Estimates 68
5.5 Financial Statements 73
5.6 Condominium Budget Guideline 76
5.7 From a Financial Perspective 80
5.8 Common Questions Raised by Condominium Owners 90

6.0 INSURANCE 105

6.1 Outline of Needed Insurance 105
6.2 Property and Liability Coverage Check List 113
6.3 Condominium Corporation Insurance:
10 Most Common Problems 115
6.4 Board Insurance Decisions 117
6.5 Processing A Claim 121
6.6 Summary: Insurance Issues 127

7.0 FORMS 128

7.1 Sample Annual Calendar 128
7.2 Annual General Meeting Checklist 129
7.3 Statutory Declaration 132
7.4 Agreement and Undertaking By Tenant 133
7.5 Minutes 134

7.6 Document Registration Request 136

7.7 Notice of Change of Members of the Board 137

7.8 Notice of Change of Address for Service 138

7.9 Notice of Change of By-Laws 139

7.10 Service Request 140

7.11 Caveat 141

7.12 Discharge of Caveat 142

7.13 Affidavit in Support of Garnishee Summons 143

7.14 Garnishee Summons 144

7.15 Affidavits 145

7.16 Notice of Withdrawal 147

7.17 Summons 148

7.18 Estoppel Certificate 149

7.19 Edmonton Parking Patrol 150

8.0 TENANTS IN CONDOMINIUMS 151

8.1 The Director's Perspective 151

8.2 The Tenant 151

8.3 The Property Manager 152

8.4 The Other Owners 152

8.5 The Owner Leasing the Unit 153

8.6 So What Can A Board Do? 153

8.7 The Condominium Property Act of Alberta 156

8.8 Liabilities of Board Members 164

8.9 By-Law Enforcement 165

8.10 Fees Collection - Caveat Priority 166

8.11 The Emerging Law of Condominiums, Cooperatives and Homeowner Associations 168

8.12 Association Has A Duty to Protect Residents From A Foreseeable Risk of Crime 169

8.13 Cases 176

9.0 DIRECTOR'S CHECKLIST 193

10.0 CONDOMINIUM PROPERTY ACT 194

1.0 INTRODUCTION

1.0 INTRODUCTION

This report brings together a variety of papers assembled by the Canadian Condominium Institute on the occasion of the First Alberta Condominium Conference. It is intended to serve as a reference manual of condominium management procedures.

The Institute is concerned that many condominium associations lack familiarity with basic condominium terminology, procedures and management practices. This manual is intended to address the condominium community's need for information respecting these issues. The focus of the report is upon providing practical information on the wide variety of matters with which a condominium board member or association might have to deal.

Section Two presents a glossary of condominium related terms.

Section Three discusses the importance and responsibilities of the task of board member and provides practical suggestions for better performance.

Section Four addresses the running of effective condominium meetings, including such aspects as procedures, requirements, responsibilities of various participants and suggestions for making meetings and individual participation more effective.

Section Five examines the various types of budgets, budget requirements, reserve funds, financial statements and answers common questions respecting these issues.

Section Six reviews condominium insurance needs including types and extent of coverage required.

Section Seven provides examples of the common types of forms which are often encountered in the condominium field.

Section Eight addresses the controversial issue of tenants in condominiums.

Section Nine provides a condominium directors checklist.

Section Ten shows where to get a copy of the Condominium Property Act.

2.0 GLOSSARY OF TERMS

2.0 GLOSSARY OF TERMS

ASSET

The owners share the assets of the corporation which may include real and personal property acquired for the use and enjoyment of the property, in the same proportions as the proportions of their common interests.

ACTION

Legal proceedings brought by or against the corporation and requiring, in specific instances, the delivery of written notice to all owners and mortgagees of the units of the corporation's intention to institute legal proceedings either on its own behalf or on behalf of any owner.

AUDITOR

A person licensed as a public accountant under the Public Accountantcy Act appointed at the annual meeting by the owners and who may only be removed as the corporation's auditor by the owners.

BOARD OF DIRECTORS

The directors of the condominium corporation are the elected representatives of the unit owners and assume the responsibility for the management of the condominium property and its business affairs.

BY-LAWS

The documents which supplement many of the matters contained in the declaration. They deal with the daily operational aspects of the condominium corporation and the duties and responsibilities of the board of directors.

CAVEAT

A prescribed form of notice that an interested party (called the caveator) files with the proper legal authorities directing them to stop or refrain from an action until he can be heard.

COMMON ELEMENTS

Those parts of the property that are shared and jointly owned by the unit owners, meaning all of the property except the units.

COMMON EXPENSES

Expenses incurred by the condominium corporation in maintaining the common elements of the property and in carrying out the duties and responsibilities specified in the condominium documents and the Condominium Act.

COMMON INTEREST

The proportionate interest in the common elements belonging to a unit generally reflecting the size of the unit in comparison with other types of units within the condominium plan. In the event of a sale of the property or any part of the common elements and in the event of termination of a condominium plan, the owners share the proceeds of the sale in the same proportions as their common interests which are generally set forth in a schedule to the declaration.

COMMON SURPLUS

Cash on hand which has not been allocated and paid into the reserve fund must be applied against future common expenses and cannot in any event, other than upon termination of the condominium plan, be distributed to the owners or mortgagees.

CONDOMINIUM

The term applied to a specific type of property ownership rather than to any distinct style of building. In condominium ownership the owner owns his own unit and shares ownership in the remainder of the property (the common elements) with the other unit owners.

CORPORATION

A legal entity created upon the registration of a declaration and description in the appropriate land registry office of the Minister of Consumer and Corporate Affairs, without share capital whose members are the owners from time to time. The corporation, unlike a private business corporation, does not enjoy limited liability and any judgment against the corporation for the payment of money is also a judgment against each owner for a portion determined by the proportions specified in the declaration for sharing common interests. The objectives of the corporation are to manage the property and any assets of the corporation and the duties of the corporation including effecting compliance by the owners with the Act, the declaration, the By-laws and the rules.

DAMAGE

Where damage to the building occurs, the board of directors must determine within thirty days whether there has been substantial damage to twenty-five percent of the buildings. There is a positive obligation upon the corporation to repair after damage, unless, within sixty days after the determination above, the owners have by a substantial vote (80%) elected to terminate the condominium plan, in which event the property is sold and the owners share the proceeds of sale in the same proportions as their common interests.

DISCHARGE

A prescribed form of document executed by the corporation under seal and registered in the appropriate parcel unit register, releasing the unit and the unit owner from the corporation's claim for caveat for arrears of contributions toward common expenses.

DISCLOSURE STATEMENT

A series of documents prepared by the proposed declarant and issued to proposed unit purchasers describing the property including the types and number of buildings, units, recreational and other amenities containing a budget statement for the one year period immediately following the registration of the declaration and description. Unless and until the purchaser receives a copy of the current disclosure statement and all material amendments hereto from the declarant or proposed declarant, as the case may be, the agreement of purchase and sale is voidable by the purchaser. The declarant is also liable to the purchaser of a unit for residential purposes for any damages for loss sustained by the purchaser who has relied upon material statement or information in the disclosure statement that is shown subsequently to be false.

EASEMENTS

A legal grant of rights to a person or persons which allows a person to pass over property not owned by that person. The corporation may, by special by-law, grant or transfer an easement or licence through the common elements. Easements for supporting the building for the provision of any service through any installation of the common elements are implied under and statutorily created under the Condominium Act without requiring a separate legal transfer by registered deed.

ENCUMBRANCE

A burden or claim on property such as a mortgage or lien.

ESTOPPEL CERTIFICATE

A precribed form of document commonly referred to as an "estoppel certificate" to be issued under corporate seal by the corporation to any person acquiring an interest in a unit, within 20 days after its receipt of the request. It contains specific information concerning the status of contributions by the unit owner toward common expenses and general information concerning the operation and financial stability of the corporation.

'EXCLUSIVE USE' COMMON ELEMENTS

Those common elements whose use is restricted to the owners of one or more units; conversely, those which are not available for use by all unit owners. (e.g. balconies, individual parking spaces, lockers, etc.) The declarant may, alternatively, describe individual parking and locker spaces as registered units in which event legal ownership of the particularly described area within the building is actually transferred to the unit owner.

INSPECTOR

A person appointed by the Court to conduct an investigation or audit of the financial affairs of the corporation and to make such investigation of the affairs of any person in receipt of trust money as the Judge considers necessary and to report the results of his investigation to the Court.

INSURANCE TRUST AGREEMENT

An agreement whereby a trustee distributes the proceeds from an insurance policy, on behalf of the Condominium Corporation, the unit owners, and mortgagees.

LIEN

A claim for the payment of money against a unit or a Condominium Corporation. The right to a lien can only be created by legislation. The enforcement of a lien is by way of sale of the property. A notice of lien in the prescribed form is registered in the parcel unit register in the land registry office within three months after default and, provided that separate notice by registered mail is given to every mortgagee and encumbrancer of the unit prior to lien registration, the lien (in respect of residential units only) has priority over such mortgages and encumbrances.

MAINTENANCE

The allocation of maintenance responsibilities as between the corporation and the unit owners is found in the declaration and on a table depicting maintenance responsibilities provided by the declarant to the newly elected board of directors at the turnover meeting. Maintenance includes periodic repairs and replacements of parts of the building but does not include repairs after damage which are generally covered by the corporation's master policy of insurance insuring both the units and common elements. Where an owner fails to maintain his own unit as required by the declaration, the corporation may carry out the necessary repairs and is deemed to have the consent of the owner's contribution toward common expenses.

MANAGEMENT CONTRACT

The agreement entered into by the Condominium Corporation with a property manager (whether individual or corporate) creating a principal/agent relationship between the corporation and the manager whose authority to act as agent for the corporation is set out in the contract. The manager generally assists the board of directors in carrying out the financial and physical administration of the property and assets of the corporation. The manager's services may be terminated for cause without notice and, in the case of a management contract entered into at a time when the declarant own the majority of units (the initial management contract), such contract may be terminated without cause on passage of a By-law and upon giving the original manager sixty days notice in writing. The original management contract as well as other service contracts entered into by the declarant appointed board automatically expire twelve months after their effective date unless such agreements are ratified by the board of directors elected at the turnover meeting.

MASTER PLAN

A detailed plan of the layout and location of the development, its units, common elements and exclusive use elements. It includes a survey of the land, building outlines and structual plans. The description thus clearly shows those parts of the condominium development that are to be privately owned and those areas that are to be owned in common by the owners. The procedure for amending the description is similar to that of amending the declaration.

PROXY

A document used to authorize an individual, other than the person entitled, to vote at meetings on that person's behalf. There is, as yet, no prescribed form of proxy, however, the Court has decided that a condominium proxy form cannot be irrevocable.

REGISTRATION

Used in the condominium context to indicate the final step to invoke the Act by registering the declaration and description in the land registry office.

RECORDS

Records of the corporation to which each owner has access are not limited to financial statements. Records include the corporation's register, estoppel certificates, minutes of owners' meetings and board meetings, amendments to the declaration, By-laws and rules, the structural plans of the buildings, management and other service contracts, plans for underground site service, site grading, drainage and landscaping and existing warranties and guarantees for all equipment, fixtures and chattels included in the sale of either the units or the common elements.

RULES

Normally referred to as house rules, the board adopts rules respecting the use of the common elements and units to promote the safety, security or welfare of the owners and of the property. By resolution of the board and by serving notice of the rules which are published and forwarded to each owner at his address. Rules may be passed which are reasonable and consistent with the Act, the declaration and the By-laws. New rules become effective thirty days after their publication unless the owners requisition a meeting to consider the rules in which event they only become effective upon approval at such meeting of owners.

REGISTER

A record of those owners and mortgagees of units who have advised the corporation of their interest therein and by so doing, are entitled to receive notice of any meetings of the owners. The corporation's register may be similar to but is not necessarily the same as the parcel unit registers located in the land registry office.

REQUISITION

A document prepared and signed by at least fifteen percent of the owners of the units requiring the board to call and hold a meeting of the owners within thirty days. The requisition is required to state the nature of the business (the agenda) to be presented at the meeting and is deposited at the address for service of the corporation set forth in the declaration or in a resolution of the board changing the address for service which is found in the constitution index at the land registry office.

TERMINATION

An act that ends the condominium corporation's government by the Condominium Act.

TRUST MONEY

The monies received either by a proposed declarant from a proposed unit purchaser who takes occupancy of the proposed unit prior to registration. In these circumstances, the Act requires such purchase monies to be held in trust by the proposed declarant to the credit of the purchaser or the declarant must deliver a prescribed security to the purchaser for repayment of said monies, i.e. an insurance deposit receipt. Trust money also refers to all funds received by or on behalf of the corporation from whatever source to be deposited into the corporation's current operating account or into the reserve fund account.

UNIT

Term used to denote those parts of the project which are individually owned.

3.0 THE BOARD MEMBER'S PERSPECTIVE

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3.1 INTRODUCTION

At one time or other, many of us went to an Annual General Meeting and volunteered to serve on the board of our condominium. Most of us are owner-occupants and chances are good that we were motivated by a desire to protect the value of our property and to ensure that the services we expect are delivered.

So now we all have "second jobs" of a sort, although without the accompanying paycheque. This discussion will concentrate on the condominium board member's "job"--some comments on what it really is from a practical standpoint and some thought on how to organize things to get it done well without devoting excessive time to the effort.

First I should tell you something about my perspective. I am **not** a condominium professional. The opinions I will express and the information I offer is not that of a lawyer, accountant, insurer, property manager or engineer. Rather, they represent the viewpoint of a homeowner who has taken an active interest in condominium affairs. I've been involved with the administration and operation of both small businesses and not-for-profit corporations, so I am at home with the interactions of boards, contracts, managers, professionals and technical experts. This is my second term as treasurer of my condominium and I serve as a director of the South Alberta Chapter and the national CCI. My thoughts are reactions to what I've learned about the realities of condominium after volunteering to help run a forty-seven suite inner-city highrise in Calgary.

3.2 WHAT WE'VE TAKEN ON -- A QUICK AND DIRTY OVERVIEW

What follows is a brief discussion of the scope of an Alberta condominium board's role set in the "correct" terminology. It is not intended to encompass many of the details or implications of the subject nor will it provide a comprehensive reference. Rather, it is a general overview of what we, as board members, have gotten ourselves into. Making sure we understand it may help us start off thinking "in the right terms".

The organizational structure and operating requirements of an Alberta condominium are set out in the **Condominium Property Act** and in the current **By-Laws** of a **corporation** which was created by the **registration** of a **condominium plan** with an Alberta Land Titles Office.

The name of this corporation is **The Owners: Condominium Plan No. ...** (followed by a seven digit number which was assigned to the plan).

In general, the **board of Managers** is charged with the **powers and duties** of this corporation. The board's exercise of these powers is subject to **restrictions imposed or directions given at general meetings** of the owners and is regulated by the corporation's **By-Laws**.

The **control, management and administration** of the **common property**, of any **real and personal property** belonging to the corporation, and of the corporation itself, is the collective responsibility of the board.

We are required to keep the common property in **good and serviceable repair** and to **properly maintain** it.

We must ensure that **insurance** is placed on both the **common property** and the **units.**

We are required to convene an **annual general meeting** of the owners within fifteen months of the preceding one and to call and hold any other properly requisitioned **extraordinary general meeting.**

We must ensure that **estoppel certificates** are issued, **information statements** are provided, and copies of **insurance policies** are delivered when requested. We are required to see to it that notices of **Change of Address for Service and Change of Members of the Board** are filed with Land Titles Office.

We are empowered to (1) **levy contributions** toward the **common expenses** from the owners in proportion to the **unit factors** for their respective **units,** (2) to determine the amounts to be raised, and (3) to collect arrears, interest and costs by various means. We may invest funds not immediately required by the corporation but only in those investments in which a **trustee** may invest under the **Trustee Act.**

We are entitled to know who occupies the units, to obtain the names of tenants, to ascertain the amount of rent being paid on any unit, to charge a security deposit relating to the **common property**, and to be provided with a means of contacting absentee owners or their agents.

We have the power to effect **compliance** by all owners and occupants with the **Act** and the **By-Laws** of the corporation. We should do so fairly and without favouritism.

We have a duty to disclose any **conflict of interest** and we must act **honestly**, in **good faith**, and **competently.**

In addition, the **By-Laws** of any particular condominium **corporation** may require that the board do specific things and grant it powers to carry out its obligations. Typically, responsibilities covered in By-Laws include:

- preparing and distributing **Annual Budgets**,
- planning and maintaining an adequate **Reserve Fund**,
- keeping **Minutes** of board and general meetings,
- keeping proper **Books of Account**,
- keeping a record of **Owners**, **Mortgagees**, and **Tenants**,
- preparing and presenting **Annual Financial Statements**,
- obtaining a yearly **Audit**,
- making **Rules and Regulations**,
- purchasing specific kinds of **Insurance**,
- providing specific **Services**,
- electing corporate **Officers** from among the board members,
- levying any **Special Assessments** that are required,
- hiring **Employees**,

and

- retaining the services of a **Property Manager** in connection with the **control, management and administration** of the **common property** and the exercise of the **powers and duties** of the corporation.

The role that a board can contract out to a property manager, if allowed under a By-law, seems remarkably similar to any good, concise statement of the general responsibilities of the board. The fact is that most of us have this kind of By-law and have exercised the option that it grants us--to contract full service management.

If we're really viewing the board member's role from the perspective of the practical work involved, why should we bother learning all the legalistic details? How do they bear on what we actually do at meetings? Isn't knowing all about these things our property manager's job? A lawyer might answer these questions by pointing out that ultimately board members are liable for their actions. It is therefore only prudent for them to have a very clear understanding of exactly what the scope of their responsibility is.

From the board member's viewpoint, however there is an even more pressing reason to be aware of every detail of our authority. A sure footing in this area is required to achieve the goals that motivated us to volunteer in the first place. We cannot properly delegate any of our authority or hope to adequately monitor the results we obtain if we don't have an absolutely clear idea of exactly what that authority is. This is an important aspect of a practical "job description" for condominium board members.

3.3 TOOLS FOR CONTROL

1. KNOW YOUR BY-LAWS

Make certain that you have a copy of your corporation's BY-LAWS and that what you have is currently in force.

READ your BY-LAWS and become thoroughly familiar with them.

READ them AGAIN and ask yourself if the board, either on its own or through any of its agents, is doing anything that it is not empowered to do.

READ them AGAIN and ask yourself if the board is not doing anything that it is required to do.

MEETING THE NEED TO DECIDE

There is certainly no reason why our board meetings should not be informal events "among friends". However, they are not social events. Board meetings are held to make and record decisions.

1. **PLAN:** Define the precise objectives of the meeting, i.e., what decisions must be made, what reports tabled, and what other business transacted.

2. **PREPARE:** Write an agenda in a logical sequence and estimate the time required for each item on the basis of its importance.

The general order of business for a board meeting is:

a) establish quorum and call to order

b) review minutes of previous meeting--
approve and correct as necessary

c) business arising from the minutes

d) reports of officers, committees, and property manager

e) new business

f) adjourment

3) **INFORM:** Distribute the agenda and minutes of the previous meeting, ensure that everyone comes prepared to discuss the topics at hand, and that any required materials or "resource people" will be present, e.g. caretaker, financial statements, engineering reports or insurance broker.

4) **STRUCTURE:** Keep the discussion on topic. Try to handle each matter in a "question, evidence, interpretation, action" sequence.

Effective chairing of meetings is a skill that must be learned with practice. It requires both a knowledge of procedure and a sensitivity to the needs of the group.

5) **SUMMARIZE:** Each decision should be summarized to the group as it is made and recorded. Minutes are a record of what was decided, not a narrative of what was said.

2. KEEP CORPORATE RECORDS

Make certain that you know what records your corporation is required to keep.

Keep all original records in the possession of the Board of Managers.

THERE'S NO ACCOUNTING FOR THE INFORMATION SOME PEOPLE NEED

The owners are principal users of a condominium's annual financial statements; it is, after all their funds which finance the board's work. Purchasers, mortgagees and insurers also use these statements. Questions are often raised about the use of the corporation's funds and about how it compares to the budget plan on which assessments were based or the way in which funds were used in the past.

It is important that clear answers to these questions are readily available. The annual financial statements provide a record of the board's conduct of the corporation's affairs. As board members, we should be concerned with the method and how well that record serves its intended purpose. Having conducted a rigorous examination, our auditors will report whether or not a particular set of statements fairly presents the results of our operations over the fiscal year as well as the financial position of the corporation on that year's last day. This report does not mean that we, as a board, have taken every available step to make our statements as clear, meaningful and useful as they might be. If it's true, the auditor will report that our statements fully respond to the questions we may wish to answer or in a way that all unit owners are likely to find easily accessible. The financial statements which are prepared for audit are the responsibility of the board. Because they are, the board should act to ensure the information provided is as meaningful as possible to the users. We have worked hard to do a good job. We should also work to be seen to do a good job.

The board also uses financial information itself. Its purposes however are more active and somewhat different from those of the owners. The board must plan for the future needs of the project, monitor the progress of its current financial plan, and make corrective decisions as events unfold. The annual statements can be a useful planning tool, but they do not address the board's more immediate needs. Various forms of unaudited interim reports are usually generated to serve these purposes.

As board members, we should recognize that our access to timely and informative financial reporting has a profound effect on our ability to maintain management control of the condominium corporation. Our accounting systems should produce easy-to-use reports quickly at month-end. These reports should be specifically designed to support the board's decision making process.

Understanding the "basis" on which a given report was prepared can be a major source of confusion. From the board member's perspective, it is important that a clear distinction be drawn between "cash" and "accrual basis" reporting and that unequivocal meaning is rendered to "revenues" vs. "receipts" and "expenses" vs. "expenditures". Interim reports which, for the sake of timeliness or ease of preparation, incorporate "mixed basis" reporting will likely fail to provide an information context which addresses the simple questions we pose as board members who must monitor controls, assess performance and make decisions during the course of a meeting.

Board members must also be sure that we understand what is included on any particular "line item" of the reports we use. This need is addressed if the various titles used to classify the corporation's income and costs are unambiguous and uniformly applied from budget preparation through interim reporting and then on the the year-end statements. However, our need for "good" financial information can be less than fully served if the accounting we use is not well-designed to describe our particular condominium.

Accounting will help board members to communicate with owners, plan for the future and make informed owners of decisions--but only if we, as board members, use it well.

3. USE FINANCIAL INFORMATION

Make certain that you understand the purpose, basis, and format of all the financial reports you use.

Work with your accountant and property manager to ensure that your financial information is serving your needs.

4.0 RUNNING EFFECTIVE CONDOMINIUM MEETINGS

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4.1 HOW A MEETING IS RUN

The key to democratic control in a condominium is the general meeting. It is at these meetings that the unit owners have the opportunity to exercise their right and responsibility of directing the affairs of the condominium. In order to improve the democratic decision-making process, certain basic tools such as a competent chairman, parliamentary procedure, agendae, minutes, as well as certain rules of thumb should be followed. Members should recognize that these tools are to increase efficiency and participation and not to control or limit their participation.

A GOOD CHAIRMAN

A good chairman is a fair, clear-headed individual who commands the respect of the group by his or her method of running the meeting. Chairing a meeting is not an easy task and all members should assist their chairman by following the established meeting procedures. At general meetings, the President of the board of Managers usually chairs, but it may be someone else specifically chosen for this job. The main tasks of the Chairman are:

- to keep the meeting orderly
- to keep discussion on topics following the agenda
- to make sure that clear decisions are made on the matters at hand and that those decisions are accurately recorded.

- to employ parliamentary procedure to ensure that the meeting is conducted fairly, that all people have a chance to speak and decisions are made democratically.

PARLIAMENTARY PROCEDURES

Parliamentary procedures are established rules of order for meetings that have been developed over years. Government bodies, business and other organizations throughout the world employ various forms of parliamentary procedures. These rules of procedure can be very complicated and people who want to become experts should study either **Bourinot's Parliamentary Procedure and Practice** (used by the Canadian Parliament) or **Robert's Rules of Order** (used by the U.S. Congress). The book **Parliamentary Procedure at a Glance** by O. Garfield Jones is very helpful. However, for normal use at general meetings, only basic parliamentary procedures are necessary to guide the conduct of the meeting.

Each condominium should decide which procedures should be followed; review them briefly at the beginning of each meeting and avoid getting into the more complicated aspects of parliamentary procedures. The following are the basic procedures which all members should be familiar with:

1. **MOTIONS:** When you want to put something forward for a decision by the group, you must word a motion. For example: "I move we buy a new hose for watering the lawn." Every motion must have a seconder, someone else who agrees to put forward the motion, before the motion is discussed. If there is no seconder, the motion is not discussed. On any

issue then, discussion will be more to the point if there is a specific motion on the floor.

2. **VOTING:** Once everyone has had a chance to speak for or against the motion, the chairman calls for a vote saying first, "All those in favour" then "All those against". The simple majority rules, unless otherwise specified in the By-laws which also indicates what to do in the case of a tie vote.

If a member feels that there is not enough information or if he cannot decide, then he may abstain from voting. A common reason for abstaining is a possible conflict of interest and it must be declared and recorded when the issue first comes up, not just when the vote is taken.

3. **AMENDMENTS:** A change or an addition to the main motion can be made through an amendment. For example, a member could say, "I move that we also buy a sprinkler for the hose". A seconder is required for the amendment. Then the chairman can allow discussion and call for a vote on just the amendment. Some people may wish to vote against the amendment (the sprinkler), but in favour of the motion (the hose). Therefore **the amendment is always voted on separately and before the main motion.**

Often people will want to put forward another idea that is related but different from what is being discussed. For example: "I move that we also buy a lawn mower". Since this is a separate idea, the chairman should not allow it as an amendment to the main motion on buying a hose. The vote on the hose should be taken first and then, a motion on the lawn mower can be put forward.

4. **CALLING THE QUESTION:** When someone in the room feels that enough discussion has taken place on a motion, they can "call the question" by simply calling out the word "question". This means that they are requesting an immediate vote. When this happens, the chair asks the membership to vote on the "question". People vote in favour if they agree that there has been enough discussion and if the "question" carries, the chair proceeds immediately to a vote on the motion which was being discussed. If the "question" is defeated, the meeting continues to discuss the motion.

AN AGENDA

An Agenda is the list of items to be discussed at a meeting. A copy of an agenda for each unit owner prevents time-consuming digressions, reminds people of what exactly is being discussed and keeps the meeting moving. Discussion at the meeting follows the order of the items on the agenda. At the beginning of the meeting, additional items may be added if the majority agrees. Then, the unit owners will vote on adopting the agenda. If a new subject is brought up during the meeting which is worthy of discussion, the chairman will call it out of order, but may ask if the unit owners wish it added to the agenda.

The agenda for unit owners' meetings should be published and circulated ahead of time so that people can be prepared for the discussions. For major issues on the agenda (such as the budget) there should be background material attached so the members can come to the meeting with their questions and comments carefully thought out.

In this section we have been dealing with general meetings, at which the unit owners, or in their stead, their proxies or their mortgagees are in attendance.

These same guidelines also apply to meetings of the board of Managers.

4.2 EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT A CONDOMINIUM MEETING AND BOARD MEETING

NOTE: Reference to numbers refer to sections of the Condominium Act

- e.g. "25 (2)" means Subsection 2, Section 25 of the Condominium Property Act R.S.A. 1980 Chapter c-22.
- By-laws mean the Corporation's By-laws as filed at Land Titles or which are appended to the Act-if in doubt check with your Solicitor to determine what are the governing By-laws of the Corporation.

ANNUAL GENERAL MEETING

When At least once every fifteen months - 25 (2)

Notices Update the Corporation's record of the names and addresses of owners and mortgagees (obtain information from The Land Titles Office and from the Corporation's records).

- Usually there must be seven days between the day upon which the notice is given and the day of the meeting (check By-laws).

- The written notice must specify the place, date and hour of the meeting, and the nature of the business to be presented (check By-laws).
- Notice must be given to each owner (and any mortgagee who has given notice to the Corporation), either personally, (i.e. handing it to the owner), or by prepaid mail addressed to the owner at the address shown in the Corporation's records - 21 (2), 21 (3) for mortgagees.
- Joint owners - each must be served personally or by mail separately.
- Main copy of the financial statements, budget and a copy of the auditor's report (if any) with the notice - (Audits may be required-check By-laws).
- Prepare Statutory Declaration of Service sworn by person who actually mailed or delivered notices.
- Send copy of any By-laws to be changed or any other written document to be considered.
- Send notice to Corporation's Accountants and Legal Counsel as well.

PREPARE

1. Ballots
2. Agenda
3. Sign-in sheet for use at meeting
4. Board must present financial statement, budget and other information, re: financial position as By-laws require.
5. Have record of condominium fee arrears, available to prove arrears of common expenses, for voting purposes.

IRREGULARITIES:

The reason for all of the technicalities is that an irregularity in connection with the meeting may invalidate the proceedings unless the irregularities are cured or waived. e.g. acquiescence. However, acquiescence will not enable the Corporation to do an act which is ultra vires or illegal.

QUORUM

- Usually owners owning 33 1/3% of the unit factors present in person or represented by proxy (check By-laws).
- A quorum is the minimum number of persons qualified to vote.
- A meeting cannot continue once a quorum disappears and must be adjourned or it automatically lapses.
- Business transacted at a meeting lacking a quorum is invalid.
- All unit owners and mortagagees entitled to vote are entitled to be at the meeting.
- Strangers may be admitted only with the consent of the meeting.

CHAIRMAN

- In the absence of specific provisions for a chairman, the president presides.
- Failing the president, the vice-president presides.
- Failing the vice-president, a chairman is chosen by election or appointment.

- If by election, a temporary chairman is selected who asks for nominations and takes a vote.
- Chairman can be disqualified by this action , e.g. preventing business from being considered, or being partial.

DUTIES OF THE CHAIRMAN

- Assure the meeting is duly constituted.
- Provide reasonable meeting place.
- Admit all persons entitled to attend.
- Preserve order.
- Ascertain the consensus of voters.
- Chairman has the right to eject any unruly person.
- Chairman must act fairly, in good faith and without malice, and may be removed if he/she refuses to allow proper questions to be put to the meeting.
- Chairman can vote, but has no casting vote unless one is specifically given in the By-laws.

SECRETARY

- Usually the secretary of the Corporation records minutes of the meeting unless prior to the meeting some other person has been appointed by the board to act as secretary, failing which the meeting may appoint a secretary.

MINUTES

- Corporation must keep adequate records which include minutes of all owners' and board meetings (see By-laws - 36 (h)).
- Minutes need not contain speeches, arguments or motions that were not passed.
- A minute is not a report. A report is what was said at the meeting, i.e. speeches, arguments; whereas, a minute is what was done or agreed upon, e.g. resolutions and decisions.

SCRUTINEERS

- Appointed by owners to assist chairman in taking attendance, counting proxies and ballots.
- Scrutineers need not be qualified to vote.

AUDITORS AND PROPERTY MANAGERS

- Owners may appoint auditors to hold office until the close of the next annual meeting (check By-laws).
- Owners may appoint or vote out Property Managers (check By-laws).
- If Corporation has an auditor or accountant, or a property manager, have a representative there to answer questions.

PROCEDURE FOR APPOINTMENT

- CHAIRMAN CALLS FOR MOTION FOR ONE NAME TO FILL THE POSITION IN QUESTION.
- Motion dealt with in usual manner.

- If motion carried, appointment is completed, if motion is defeated, chairman requests another motion to appoint, and so on.

VOTING

- Generally one vote per person entitled to vote unless poll demanded
- Any person entitled to vote can demand a poll.
- If a poll demanded an owner has as many votes as he has unit factors assigned to his unit.
- If more than one owner of a unit then the unit factors for that unit are divided by the number of owners.
- Proxy votes may be given on a show of hands or on a poll.
- Often the By-laws provide that an owner is not entitled to vote if his/her condominium fees are in arrears for more than thirty days prior to the meeting, (exception when unanimous vote required - 21 (2) (a)).
- Unless otherwise provided in the By-laws, all questions decided by a majority of votes cast.
- Certain resolutions may require a 75% (Special Resolution - 1 (5) or unanimous vote (Unanimous Resolution 1 (U)). i.e. Amending By-laws require vote of 75% of all unit owners representing not less than 7500 unit factors - 26 (2); Lease or sale of part of the common property requires a Unanimous Resolution plus consent of all owners - 40 (1), 40 (2).
- Resolutions can be signed.
- There is no such thing as a secret vote in Corporation meetings.

NOMINATION AND ELECTION OF BOARD

- Nominations do not require seconding and are not debatable or amendable.
- Person nominated may decline nomination at any time.
- Nominations may be closed by the chairman after a reasonable time has elapsed or by resolution of the voters, but a speaker may not be interrupted for this motion.
- Motion to close nominations requires seconding and is not debatable.
- A person nominated does not have to be present to be elected.
- Consult By-laws for further provisions.
- Notice of Change of Board Members must be filed within 15 days of any change - 23 (2).

PROXIES

Proxy votes may be given on a show of hands or on a poll.

The instrument appointing the proxy must be in writing, under the hand of the appointer or his attorney, and may be either general or for a particular meeting.

Chairman decides validity of all proxies, but may delegate scrutineers.

Chairman to satisfy himself that:

1. The appointer has the right to vote.
2. The proxy is present and qualified to act.
3. The document appointing him is in proper form and properly signed.
4. The document has been deposited in time.

5. The appointment has not been revoked.

6. The vote conforms with the restrictions and instructions contained in the document.

- Check By-laws for any specific qualifications about proxies.
- Each proxy is deemed to be valid and genuine if the form is proper and appears to have been executed by a person entitled to vote.
- Objections to acceptance or rejection of proxies must be made at the meeting, otherwise deemed waiver of irregularity.
- Methods used to solicit proxies affect their validity and proxies improperly obtained are invalid and votes based upon them are null and void.
- Proxy must contain date, appointment, name of proxy, signature of appointer and may contain revocation of former appointment, instructions as to voting, expiry date, authority to act on behalf of appointer at meeting.
- A vote by any one of joint owners in person or by proxy in the absence of a contrary vote by any of the other joint owners in person or by proxy is acceptable.
- The proxy has an implied authority to fill in some blanks in the proxy instrument, including date, name of proxy, date of meeting.
- Proxies may be deposited up to the time of voting.
- Proxies may be revoked at any time before exercised even where it appears by its terms to be irrevocable, or by subsequent execution of another proxy containing a revocation or by death of appointer.

- Where two or more proxies from same appointer, last proxy takes precedence.
- Where different handwriting on duplicate documents or revocations, handwriting should be ignored, whether similar or different because there is a presumption that all signatures are valid.

MOTIONS

Four kinds of motions:

1. Main motions which originate business.
2. Subsidiary motions which modify or dispose of the main motion.
3. Incidental motions which arise incidentally out of business being considered.
4. Closing motions which close the meeting permanently or temporarily.

MAIN MOTIONS

- Main motions originate business, direct, authorize, adopt, ratify, approve, confirm or reject actions.
- A speaker or the discussions may not be interrupted for a main motion.

SUBSIDIARY MOTIONS

- Subsidiary motions modify or dispose of the main motion.
- Discussions may be interrupted for subsidiary motions, but not

while a speaker has the floor.

- Subsidiary motions take precedence over main motions, but not over incidental or closing motions.
- e.g. Subsidiary motion to vote immediately, close discussion, adjourn discussion, amend a motion.

INCIDENTIAL MOTIONS

- Incidental motions arise incidentally out of the business under consideration and concern the rights and privileges of the unit owner.
- Incidental motions are procedural type motions.
- Incidential motions take precedence over main and subsidiary motions, but not closing motions.
- e.g. Point of order, parliamentary inquiry, point of information, question of privilege, object of consideration, withdraw motion, count quorum.

CLOSING MOTIONS

- Closing motions deal with the termination of MOTIONS; suspension of the meeting and have the highest priority.

PROCEDURE FOR PROPOSING A MOTION

1. Voter indicates to the Chair his desire for the floor and when recognized rises and proposes his motion.

2. If it's a motion which requires seconding, the Chair asks for a seconder. If no seconder is forthcoming the motion is rejected.
3. The Chair considers its relevancy and its form and if satisfied that it is in order, calls for discussion on the motion.
4. If there is any confusion about the wording of the motion or any doubt as to its exact meaning and effect, the Chair may ask the Proposer to repeat, explain or clarify.
5. When discussion has ended, the Chairman restates the motion and owners decide upon the method of voting. (Unless otherwise demanded voting is usually by a show of hands)
6. The vote is taken.
7. The Chair declares the results.

MOTIONS

- All motions and amendments must be relevant, in the affirmative.

SECONDING

- Seconding a motion does not express approval of it, but merely indicates an interest in having it discussed, and there's no obligation on the part of the Seconder to vote in favour of the motion.

AMENDMENTS

- The mover of a motion or an amendment may withdraw or modify it before it has been stated by the Chair or seconded. After it has been stated by the Chair or seconded, it can be withdrawn only with the consent of the meeting.

- Amendments are voted on before the motion and if the amendment is carried, the original motion is reworded to incorporate the amendment. Unless another amendment is moved, the original motion is then voted on.
- If there is a sub-amendment, it is voted on before the amendment is voted on
- If the sub-amendment is carried, the amendment is reworded to incorporate the sub-amendment, and unless another sub-amendment is presented, the amendment is then voted upon in the normal fashion.

POINT OF ORDER

- A point of order demand enables a voter to insist upon strict compliance with the rules of order and to draw attention to a violation of the rules of order.
- Speaker and discussion may be interrupted for a point of order.

PARLIAMENTARY INQUIRY

- A demand for parliamentary inquiry enables a voter to ask the Chairman or the Speaker questions regarding the procedure to be followed.
- A Speaker may be interrupted for a demand for parliamentary inquiry.

POINT OF INFORMATION

- A point of information demand enables the voter to have answered basic questions which are necessary to the understanding of the motion on the floor, for which a speaker may be interrupted.

QUESTION OF PRIVILEGE

- Question of privilege - each speaker who has the right to attend may raise a question of privilege if his personal comfort, right or convenience at the meeting is wanting, or if he cannot hear or be heard or has been subjected to insult or abuse and, as well, the speaker and discussion may be interrupted.

DISCUSSION

- Discussion on a point must be relevant to the subject, impersonal and directed to the Chair.
- Chairman should not stifle debate, but if discussion has continued for a reasonable time and viewpoints for and against have been given, Chairman may ask for a motion to terminate the discussion or vote immediately.

INTERRUPTING SPEAKER & DISCUSSION

A speaker may interrupted only for the following motions or demands:

1. point of order
2. parliamentary inquiry
3. point of information

4. question of privilege
5. object to consideration

Interrupting the discussion is changing the subject of the motion on the floor. The discussion may only be interrupted for the following motions or demands:

1. conclude the meeting
2. adjourn to a fixed day
3. recess
4. count quorum
5. point of order
6. parliamentary inquiry
7. question of privilege
8. withdraw motion
9. object to consideration
10. divide a motion
11. vote immediately
12. adjourn discussion
13. postpone indefinitely
14. refer or refer back
15. amend motion

BOARD MEETINGS

- The board has the duty to manage the Corporation - 23 (3).
- Quorum is majority or such greater number as found in By-laws.

- Meeting invalid unless there is a quorum.
- Board member may call board meeting at any time upon proper notice.
- Generally the By-laws, provide that at least seven days written notice of time and place of meeting must be given to each board member personally or by prepaid mail, addressed to him at his latest address as shown on the records of the corporation.
- Although board meetings may be quite informal, it is still legally a requirement to keep adequate minutes of the proceedings so the auditor, manager or any owner may check if expenditures have been duly authorized by the board.
- A certain formality is desirable and will help speed up the meeting.
- A written agenda is a must, even for a board meeting.
- A regular day each month should be set aside for the board meeting to facilitate everyone being available and to remember the date.
- The written agenda together with all desirable documention and the manager's report should be distributed to all board members a couple of days before each board meeting. This will serve as a reminder of the meeting and to help prepare board members for the topics to be dealt with.
- Manager's report should contain the following:

  1. items for information only,
  2. items to be discussed and approved by the board,
  3. monthly financial operating report detailing all transactions, corporation's current financial position in relation to budget and arrears list, and

4. all proposed details and quotations for items to be approved by the board.

MINUTES

- The corporation must keep adequate records which include board minutes (check By-laws).
- Board members ought to place on record, either in formal minutes or otherwise, the purpose and effect of their deliberations and conclusions. If they do this insufficiently or inaccurately they cannot reasonably complain if false inferences are drawn from their reports.
- Minutes should contain date, time, place of meeting, persons present, names of chairman and secretary, resolutions passed, appointments made and business conducted and should be signed by chairman.
- Minutes need not contain speeches, arguments or motions that were not passed
- A minute is not a report; a report is what was said at the meeting, i.e. speech and arguments.
- A minute is what was done or agreed upon - resolutions and decisions.

CONFLICT OF INTEREST

- Declaration of conflict of interest where there may be a conflict of interest, board member should declare conflict at first meeting where issuary conflict arises.

EXAMPLE OF SOME SPECIAL TYPES OF MEETINGS (UNLESS BY-LAWS PROVIDE OTHERWISE)

Meeting to fill vacancy caused by decrease in number of board of managers

- By-laws usually provide that where there is not a quorum of board members in office, remaining board must call meeting of owners to fill vacancies, failing which unit owners can call meeting,
- Meeting called to confirm or approve board members conflict of interest,
- Usually unit owners owning at least 25% of the unit factors may require the board to call and hold special meeting (extra ordinary meeting).

PRACTICAL POINTS FOR A BETTER MEETING

- Plan your meeting well in advance.
- Deal only with important topics that must be done at the annual general meeting.
- Explain to the owners in a newsletter that any minor problems are to be handled by the property manager (if any) and not at the annual meeting.
- Stick to the written agenda. Don't allow speakers to stray from the topic or point you are on, and tell the speakers to bring up other points under other business.
- Let the owners know well in advance what you are going to deal with other than the usual. Give them all the information you have early, and ask for submissions or opinions before the meeting so you can check them out and deal with unfeasable ideas before the meeting.

- Keep good minutes of all meetings. Adopt a format and stick to it, even for board meetings. Distribute copies (unapproved) to board members together with other supporting documents before the meeting to allow them to study and prepare, and to refresh their memories. Minutes also serve as a reminder or check to ensure that work approved has been completed.
- Once a subject has been debated adequately, limit debate if time is short.
- Give both sides in an argument equal time. If you have had two or three speakers in a row in favour of the proposal, ask for someone to speak with an opposing view. Give all parties a chance to give a short rebuttal. Don't allow one side to make accusations without giving the opposition a chance to answer back.
- Be fair in recognizing speakers. Where possible give all the owners a chance to speak, don't let one individual dominate the meeting.
- Always start meetings on time. Collect a large number of proxies if needed to get a quorum so you can start on time. If your meetings always start late, pretty soon no one will show up on time.
- Avoid using polls to vote where a show of hands will do. Use polls for important votes, i.e. election of the board.
- Consider hiring an off-duty police officer to enforce order. Have him there half an hour before the meeting starts. Instruct him to escort anyone out of the meeting who repeatedly interrupts the meeting. Don't tolerate any unruly behaviour or you will have

difficulty to get the owners to attend future meetings.

- Publicize the date of the meeting early.
- Use gimmicks if you have to, to attract people (Door prize etc.).
- Post notices on common property a couple of days before the meeting.
- Come well prepared Don't bother with too many reports, but have the president's report and the treasurer's all typed out in large, easy to read type and stick to it.
- To compile your president's report, go back through all year's minutes and newsletters, and sort out the details according to importance. Tell the owners about the coming year, what you expect and how the owners can help. Try to keep it short.
- Have someone chair the meeting, who can be well understood when he/she talks. There is nothing worse than attending a meeting where you can't understand the chairman. Instead of listening to the chair, people will soon start to talk among themselves, making it even worse.

BEFORE THE MEETING

- Have all the ballots counted and divided into the number of unit factors.
- Have a few owners there early to mark attendance, scrutinize proxies and give out ballots. You will need 15 minutes to have them all well briefed. You should therefore be at the location 45 minutes before the starting time of the meeting. Have these people take an attendance count five minutes before the start of the meeting to verify that a quorum is present.
- Organize your proxies in numerical order to facilitate finding them.

4.3 CONDUCTING EFFECTIVE MEETINGS

SOME DO'S AND DON'TS

DO'S

DO make sure that the facility where the business meeting will be conducted is completely prepared for the event.

DO make sure that the persons attending receive ample notice of the presentation.

DO set up an agenda and time schedule and follow them as closely as possible.

DO make the meeting entertaining as well as informative for maximum interest.

DO use attention-getting devices when beginning the meeting whenever possible.

DO keep the tempo at a brisk pace during the meeting.

DO use visual aids such as charts, films, and sketches to accentuate key points of the meeting.

DO have a brief recap stressing the highlights of the meeting.

DON'TS

DON'T use the same format for every meeting conducted. Variety and freshness are very important.

DON'T bog down the program with too many logistics. Stick to the key points.

DON'T start the meeting until food and/or beverage, if being served, are finished by the majority.

DON'T make the program too stiff and formalized. It should be businesslike and well organized but seem informal.

DON'T try to cover too many topics in one meeting. It is more important to make a few points extremely clear than have a number of important points explained only briefly.

DON'T forget to supplement your presentation with printed material for those attending.

WHAT IS YOUR PROFILE AS A MEETING PARTICIPANT?

The good meeting participant:

A. Plans for the Meeting

- thinks about the problem ahead of time
- talks with others who know something about the problem
- gets as many facts as time allows
- understands why he is attending

B. Contributes Ideas to the Discussion

- offers facts and ideas
- doesn't quickly discard his own views in face of opposition
- understands the facts
- understands the problem

C. Listens to the Ideas of Others

- understands the viewpoints of others
- helps others develop their views and ideas
- is courteous and alert
- listens carefully and thinks

D. Considers the Problem Objectively

- maintains an objective attitute
- avoids giving (or accepting) opinion as fact
- avoids emotionalism
- maintains confidences and avoids gossip

E. Contributes to the Orderly Conduct of the Meeting

-arrives on time

-makes arrangements to avoid personal interruptions

-avoids side conversation

-does not dominate the meeting

-avoids sarcasm and ridicule

SAMPLE AGENDA

GENERAL MEMBERSHIP MEETING FAIRWEATHER CO-OPERATIVE INC.

8.00 P.M.	1.CALL TO ORDER - Introduction of guests and new members present
8:05 P.M.	2.ADOPTION OF AGENDA - before the vote to adopt, the chairman will ask if there are any additions to the agenda
8:15 P.M.	3.ADOPTION OF MINUTES of the last member's meeting (prior to this vote any corrections to the minutes should be noted)
8.25 P.M.	4.BOARD OF DIRECTORS REPORT - a summary of decisions made by the Board since the last general meeting
8.45 P.M.	5.MEMBERSHIP POLICY - proposed policy from membership committee attached
9.15 P.M.	6.REPORT - recreation committee-upcoming events
9.30 P.M.	7.BUDGET - proposed budget from finance committee attached
10.00 P.M.	8.ANNOUNCEMENTS - general items of interest members may wish to report on
10.15 P.M.	9.ADJOURNMENT

MINUTES

MINUTES are the written record of all decisions made at the meeting. They must contain any motions that were put forward, who moved and seconded them and whether they were carried or defeated. When decisions are taken which require action after the meeting, the minutes should specify who is going to do what. Extreme care should be taken to make sure they are complete and accurate so that there is no doubt what happened. The secretary of the co-op generally takes the minutes at members' meetings. Members can assist the secretary by clearly stating their motions. If the motion is long, writing it on a piece of paper is helpful. The chairman should repeat who moved and seconded the motion. After the meeting, the secretary has the minutes typed up and circulated to members. It is a good idea for members to keep all minutes of meetings together for easy future reference and guidance.

SPEAKER'S LIST

Often there will be an item on the agenda that everyone wants to speak about. To ensure that everyone has an opportunity to speak, one at a time, the chairman will draw up a speaker's list for that item. At the beginning of the discussions he or she will ask who wishes to speak on the matter, take the names down and allow members to speak as their names come up on the list. Members should assist in keeping the meeting orderly by waiting their turn, and not interrupting others.

STRIKING OF AD HOC COMMITTEES

Occasionally it will be found that some discussions at a meeting become too complicated for a decision to be made at that time. An "ad hoc" or special committee consisting of a number of volunteers may be created to examine the issue in more detail, develop further information and report back to the members at the next meeting.

Each co-operative may use additional procedures for meetings. As long as all members are familiar with them and use them effectively, members' meetings will be satisfying and enjoyable as well as productive.

KEY PRINCIPLES FOR COMMUNICATING A MESSAGE

1. PREPARATION:

Make sure the message is clear in your own mind. If not, determine why not and clarify it.

-what do you want to communicate?

-how will you do it?

-what key points do you need to review?

2. THE COMMUNICATION:

Use simple and familiar terms. Remember the object of the exercise is to communicate information. (remember KISS-keep it simple stupid)

Never assume others understand the message. Ask questions to see if their interpretation of the message is accurate.

-what do you think?

-how will this affect you?

3. ANSWERING QUESTIONS ABOUT THE MESSAGE

- -don't guess
- -be specific
- -if you don't know-say so and get an answer

MYTHS TO LISTENING

MYTH #1

Listening is a natural process

Then it follows that you will never have to learn it. You never learn what you believe you already know.

MYTH # 2

Hearing and listening are the same

Hearing and listening are generally two distinct processes. Most of us, unfortunately, treat them as one and the same.

Hearing is a natural process, but you can help listening whenever you want to.

Basically the problem is caused by the fact that the average North American talks at about 125 words per minute. However, this is slow going for the human brain which can process about 800 words per minute.The difference between the speaking rate and the thinking rate means your brain works with hundreds of words in addition to what you hear. Your brain continues to work at high speed while the spoken words arrive at slow speed.

Most of us misuse this "spare time" by mentally sidetracking or daydreaming while talking to a boss, friend or peer.

MYTH # 3

You are speaking to a mass audience

We tend to assume when talking to a group or several people that we are being heard in the same manner by each one of our listeners. Your assumption: Everyone is identical and therefore will respond in a like manner to what is heard. However,

-people are not identical

-people are differently motivated

-people side track at different times

which results in people hearing different parts of the conversation often leading to arguments among the listeners as to what "was" and "was not" said.

MORE EFFECTIVE LISTENING

1. Use "side-tracking" time more effectively.
2. Think ahead of speaker and organize.
3. Summarize what the speaker is saying to main points and supporting points.
4. Identify the speakers evidence.
5. Listen between the lines-content versus non-verbal signs.
6. Be aware that listening is affected by emotions.
7. Try to avoid being distracted

   -within you daydreaming

   -outside environment

   -speaker

	TEN WORST LISTENING HABITS	TEN BEST LISTENING HABITS
1.	Call the subject uninteresting.	Tuning in to see if there is anything you can use.
2.	Criticising the speaker's delivery, personal appearance etc.	Getting the message, which is ten times as important as the the speaker's appearance.
3.	Getting overstimulated and preparing a rebuttal.	Hearing the speaker out before you judge him or her.
4.	Listening only for facts.	Listening for main ideas and concepts.
5.	Faking attention to the speaker.	Not relaxing while listening: in good listening there is a collection of tensions inside.
6.	Trying to make an outline of everything you hear.	Listening two or three minutes before taking notes.
7.	Tolerating distractions in meeting.	Getting up and doing something about distractions-by shutting a a window, closing a door, etc.

8.	Avoiding difficult material.	Learning to listen to difficult material.
9.	Letting emotion-laden words affect you.	Identifying your own greatest word barriers.
10.	Wasting the differential between speech speed (125 words per minute) and thought speed (cruising 800 words per minute)	Making thought speed an asset instead of a liability by: -anticipating the next point to be made, -making contrast and comparison -identifying the speaker's evidence, -practicing mental recapitulation.

5.0 BUDGETING AND FINANCIAL CONTROL

5.0 BUDGETING AND FINANCIAL CONTROL

5.1 BUDGETING

Importance of Budgeting

Usually a condominium association is a non-profit organization whose basic goal is to obtain sufficient income to offset expenditures. The board of directors must realize, however, that it is running a business, with assets of probably at least $1,000,000 and revenues of anywhere from $25,000 to $1,000,000 per year. This is no small responsibility. The importance of preparing accurate budgets cannot be understated. The failure to create a balanced budget produces the following options:

1. An immediate increase in monthly assessments to meet the increased costs of expected service.
2. A reduction of services which may lower the value of the project.

Definition of Budget

1. A plan expressed in financial terms, which is designed to co-ordinate and control the various operations of a condominium association.
2. An orderly disciplined estimate or appraisal of anticipated expenses.

A budget is not merely a collection of meaningless numbers. It represents the plans of an organization for a specified period of time. If a condominium corporation has professional management and maintenance, its expenses for the year may be significantly different. Depending on which alternative the condominium association chooses, the amount of money expected to be spent and thus the amount of money included in the budget will differ. The budget reflects this difference and it is ultimately reflected in the level of condominium fees.

Boards of Directors and Budgets

When a new condominium complex is built, generally the developer has established a budget and has set the condominium fees accordingly. This budget has been established on the basis of how the developer would run the complex. For example, the developer may plan that a particular condominium complex will have private garbage collection. This related cost of this service would then be included in the budget and the condominium fees would be set accordingly.

Once the board of directors has been elected and has taken over the administration of the condominium complex, it inherits the budget prepared by the developer. It is up to the board of directors to review this budget, or plan of operations, and decide how they wish to continue. Let's take the garbage collection issue as an example. The developer decided to have private garbage collection. The board of directors, after reviewing the alternatives, may determine that city pick-up is available and is not only desirable but preferable. The board then decides to cancel the private services and organizes city pick-up. The board of directors has made a decision which affects their budget for the coming year. Their decision will probably save the condominium association several hundred or even several thousand dollars over time.

This decision, which has reduced total possible expenditures for the year, will have the effect of reducing the condominium fee revenue necessary to pay for all the other expenses. Then, the board of directors must decide whether this saving is passed back to the members in the form of reduced condominium fees or whether this extra money is used to increase the maintenance reserve account.

Objectives of Budgeting

There are three basic objectives in the budgeting process. These are planning, co-ordination and control:

1. PLANNING-requires the condominium association (board of directors) to identify its objectives for the coming period and then plan how to accomplish the objectives.

   EXAMPLE-the board of directors sets the objective that it will paint the units during the next year. The board must then plan how it will get the painting done, i.e. it must decide on one of various alternatives,

   -hire professional painters
   -provide owners with paint
   -combination of above

The board's decision will affect the level of expenditures for the next year.

2. CO-ORDINATION-involves the operation of the condominium association as a single entity with a common goal and a logical relationship between the objectives to be accomplished.

EXAMPLE-the board of directors sets the objective that it will paint the units and will repair the parking lot during the next year. The financial requirements of these projects must be reviewed and if funds are limited, the board must decide upon the timing and extent of meeting both these objectives.

3. CONTROL-making sure the results conform to the plan as closely as possible.

EXAMPLE-the board of directors sets an objective that it will paint the units the next year and plans to hire a professional painter. The board has decided that it will spend a certain amount of money for this job and hires a painter on the basis of estimates. As payments are made for the work the budget provides a base of estimates and a guide for the monitoring of total costs. This control process allows the board to identify potential overruns.

5.2 TYPES OF BUDGETS

There are numerous types of budgets. These include:

Appropriation Budgets

Widely used by governments and institutions. An appropriation budget concentrates on establishing the limit to be spent on a given activity, and on obtaining formal approval for it.

The Fixed Budget

In which anticipated costs and expenses are based on a single estimated sales or production volume.

The Flexible Budget

In which costs and expenses are determined for a range of output levels which vary from the lowest to the highest anticipated level. The flexible budget permits revision of the budget estimates in the light of changes in sales or production volume.

Cash Flow Budget

Identifies the expected timing of the receipt of cash into the association and the expenditure of cash out of the association.

Operating Budget

Includes the planned revenues and expenses which are expected to be incurred in realizing the objectives of the association.

Capital Budget

Includes the planned expenditures for the acquisition of long-lived assets. In the case of condominiums, it would also include the expenditures related to the long term repairs and upkeep of the building, parking areas and other capital property.

CATEGORIES OF EXPENDITURES

Generally there are three major categories of expenditures within the condominium budget, operating, capital and special projects.

Operating Expenses

The first category relates to the on-going operations. This would include such things as management, utilities, insurance, grounds maintenance, snow removal etc.

Capital Expenses

The second category relates to the upkeep and repair of major capital assets such as buildings, parking lots, swimming pools, etc.

Special Projects

The third category includes expenditures for special projects such as landscaping or fence construction.

All of these must be taken into consideration when the budget is prepared.

5.3 BUDGET PERIOD

Budgets must be prepared not only for the short term, i.e. the next year, but must look ahead three to five and even fifteen years.

Planning for the next year's expenditures is important, but if you don't make and document a plan over the long range, there may be expensive duplication. The same units may be painted two years in a row or units may be painted when the parking lot should be repaired.

Because of the regular turnover of members of the board of directors, knowledge of what has been done in the past or the plans of the previous board of directors may not be available. Certainly the condominium association's minute book provides some history, however when it comes to the detail of which units were painted in a particular year and what was painted on each unit, a detailed record is necessary. It is suggested that this record is best kept as a separate section of the minute book and should identify such things as unit number, year painted, areas painted, type and color of paint.

Budgeting Process

The process of budgeting for a condominium involves the following basic steps.

-Identify the following types of expenditures which will be incurred in the next year:

- operating
- capital-reserve fund
- special projects

-Identify the costs related to each of the operating expenses. The board of directors has little say over expenditures relating to certain of these expenses. The board may be able to affect the amount spent but not the fact the expenditures must be made. For example, the association must have insurance. All the board of directors can do is attempt to obtain the best coverage for the best price.

-Identify the costs related to capital expenses. The board of directors decides whether expenditures are made on these expenses in any one year. Generally a certain amount of on-going work will be done based on a schedule and the board of directors can affect the amount spent in any one year and the areas where the funds are spent. (i.e. painting versus parking lot repair).

-Identify the costs of any special projects. Since these are extraordinary items and generally not crucial to the long-term up-keep of the condominium complex, expenditures in this area are completely discretionary.

-Identify the cost of the various alternatives available to complete each task, i.e.:

-self management
-professional management
-professional painters
-owner paint crews

-Identify the non-financial factors relating to each alternative.

-Select which alternative the condominium complex wishes to choose. This will be based on a combination of financial and non-financial considerations.

-Prepare a cash flow budget showing the estimated timing of expenditures and thus the timing of cash requirements. Peak periods may require that the condominium association obtain a bank loan or cash-in term deposits.

-Monitor the results. Compare actual expenditures to budget. Identify why expenses exceeded or were less than budget. Document the reasons and keep records of suggested changes for the next year.

-Prepare next year's budget based on the previous year's actual experience.

The schedules in your hand-out are a simple package of working papers which provide the documentation to support the budgeted expenditures and ultimately the level of condominium fees. The comments section under each category is meant for explanations of why expenses are expected to be at the level budgeted.

5.4 RESERVE FUND ESTIMATES

The board of directors of each condominium is obligated to ensure a reasonable reserve fund for future replacement and repairs.

The first step is to "inventory" each of the common elements of the property and determine a life span for the equipment or material in question. i.e. roofing, pavement, sidewalks, eavestrough, waterlines, sewers, light fixtures, boilers, water heaters, pumps, fences, masonry. Estimating cost ten to fifteen years in the future is, in today's inflation, like a game of Russian roulette. A roof covered in asphalt shingles in 1980 could be removed and replaced for a cost of $36.80 per 100 square feet based on Alberta 1980 oil prices. Each time a barrel of oil increases $1.00 in price, the cost of the shingle replacement increases 7.8%. The board estimator is now in the position of guessing the politics of OPEC, the Canadian government and many other agencies in relation to oil prices. An illustration of the problem the board faces, is that, should oil in Canada reach 1980 world prices of $44.00 BBL Canadian, the same 100 square feet of shingles will cost $138.70. The best program is to calculate replacement at $70.00 per 100 square foot area into reserve and plan to spend 5% per year on maintenance to extend the life of the roof in question. Contact a reputable roofing contractor for a twice yearly inspection and repair program.

The importance of the inventory can be seen from the above example on roofing. A system of calculations enables the condominium to maintain the common elements for the future, without assessing the owners exorbitant one time amounts in addition to regular condominium fees.

The reserve fund being established has to be managed and invested. Calculations for 150 unit condominium reveal that 1979 calculations for replacements will require $1,400,000.00 in 1995, for replacement of parking lots, roofing, eavestroughs, etc.

Assessments of $10.00 per unit per month will show that over the twenty year period the owners contributed a total of $310,000.00. Investing the reserve fund over the twenty years at 12% compound interest will provide an interest return of $1,100,000.00. The total is $1,400,000.00 - the required amount for reserve replacement.

The next question is what Revenue Canada says to one million dollars interest? Will they want their share? Condominiums are not exempt from income tax; the only present answer from Revenue Canada is that a condominium will not be taxed provided interest income is reasonable. The question is, can one million dollars interest under the circumstances be considered reasonable? Once again the board of directors, (in trying to serve the owners) is at the mercy of another government agency.

All the owners of condominiums must back an organization like C.C.I. to give strength of lobby to receive hard and fast rulings so that they can plan their future adequately.

CHECKLIST FOR SETTING RESERVES FOR REPLACEMENT, REPAIRS, AND BETTERMENTS

The following headings designate a number of examples that require reserve fund expenditures for major repair and/or replacement.

301	Light fixtures
301.1	Light Fixtures - Exterior
301.2	Light Fixtures - Interior
301.3	Light Fixtures - Tennis Court
301.4	Light Fixtures - Swimming Pool
302	Swimming Pools - Mechanical
302.1	Swimming Pool - Mechanical
302.2	Therapy Pool - Mechanical
302.3	Artificial Streams - Mechanical & Fountains
302.4	Artificial Lakes - Mechanical & Fountains
302.5	Acid Wash and Cleaning
302.6	Replastering or Resurfacing
302.7	Pool Covers
303	Water Heaters and Boilers - Mechanical and Electrical Maintenance
303.1	Gas-Fired Hot Water Heater
303.2	Electric Hot Water Heater
303.3	Boilers - Scotch Marine
303.4	Boilers - Fire Tube
303.5	Boilers - Water Tube
303.6	Solar Collectors

304	Elevator - Mechanical
304.1	Hydraulic
304.2	Traction
305	Forced Air Heating Equipment - Mechanical and Electrical
305.1	Forced Air Furnaces, Gas - Fired
305.2	Forced Air Units, Electric Heat
305.3	Hot Water Baseboard Heating Units
305.4	Baseboard Heating Units, Electric
305.5	Heat Exchangers, Hot Water
305.6	Radiant Heat, Electric
306	Air Conditioning - Mechanical and Electrical - Cooling Towers
306.1	Refrigerant Units
306.2	Forced Air Cooling Towers
306.3	Chilled Water Units
306.4	Individual Compressor Units
306.5	Package Units
307	Re-Roofing Common Building Elements
307.1	Built-up Composition with Mineral Cap Sheet
307.2	Built-up Composition with Gravel
307.3	Shingles, Asphalt, Compo or Fibreglass
307.4	Shingles, Wood, Sawed
307.5	Shakes, Wood, Hand Split
307.6	Metal, Aluminum or Steel
308	Repaint Exterior Buildings Elements

308.1	Exterior Building Surfaces
308.2	Repaint Fences
308.3	Repaint Walls
308.4	Repaint Interior (Building)
308.5	Decorate Interior (Buildings)
309	Floor Covering
309.1	Carpet
309.2	Asphalt and Vinyl Tile
309.3	Linoleum
309.4	Astro-Turf - Indoor/Outdoor
310	Paving - Private Streets and Parking
310.1	Asphalt Concrete (Bituminous)
310.2	Concrete

5.5 FINANCIAL STATEMENTS

The annual results of operations may be reported using either the cash basis or the accrual basis. The cash method reports only the cash received and the cash spent during the period. The accural method reports the cash or revenue which should have been received and the cash or expenses which were committed to be spent during the period.

The example below provides a comparison of the same condominium reporting its operations under both methods. The difference in results is significant.

ABC

THE OWNERS: CONDOMINIUM PLAN 123 4567

STATEMENT OF OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 1981

	ACCUAL BASIS	CASH BASIS
REVENUE		
Condominium Fees		
50 Units x $50. per month per year	$30,000.	$25,000.
Interest ($10,000. x 12%)	1,200.	1,000.
	31,200.	26,000.
EXPENSES:		
Management Fees		
50 x $9 per month per year	5,400.	5,850.
Yard Maintenance	12,000.	11,500.
Other Expenses	9,000.	8,500.
EXCESS OF REVENUE OVER EXPENSES	$4,800.	$ 150.

NOTES

The cash basis statement reflects the fact that $5,000 of condominium fee revenue was not collected. Revenue for the year is understated by $5,000 because the association was legally entitled to receive a total of $30,000.

Assuming the association had $10,000 invested at 12% for the entire year, the accrual statement shows the total interest earned. The cash statement reflects the interest received at April and October. Interest earned for the months of November and December is not recorded because it was not received.

Management fees under the accrual basis reflect twelve months fees regardless of when paid. The cash basis statement includes thirteen payments because the cheque for January of the next year was written in December.

Grounds maintenance and other expenses are lower under the cash method because payments for work done in December were not made until January of the new year. Under the accrual method, expenses are recorded if the association has incurred the expense regardless of whether the amount has been paid.

The final result is significantly different depending on the method used. Is is actually misleading to say that the reserve has increased only $150. It has actually gone up $4,800 and the association has simply not done its job in collecting the condominium fees.

5.6 CONDOMINIUM BUDGET GUIDELINE

EXPENSES FROM THE PERIOD FROM __________________ TO ___________________

EXPENSES	PAGE	YEARLY AMOUNT
MANAGEMENT FEES	57	$
GROUNDS MAINTENANCE	57	
MAINTENANCE VARIABLE	57	
INSURANCE	58	
UTILITIES	58	
BANK CHGS & INTEREST	59	
PHOTO-COPYING	59	
ANNUAL MEETING	59	
LEGAL	60	
AUDIT	60	
HONORARIUMS	60	
SUNDRY	60	
MAIN. RESERVE ACC'T	60	__________________
	TOTAL FUNDS REQUIRED	$
		==================

CALCULATION OF CONDOMINIUM FEES

$$\frac{\text{TOTAL FUNDS REQUIRED}}{\text{NUMBER OF UNITS}} = \text{ANNUAL CONDOMINIUM FEES PER UNIT}$$

MANAGEMENT FEES

#________ UNITS X _________ MONTHLY FEES PER UNIT X 12 MONTHS =

$____________

COMMENTS

This expense covers the monthly management fee.

GROUNDS MAINTENANCE

#______ UNITS X ________ MONTHLY FEE X 12 MONTHS = $ ________________

COMMENTS

This expense includes all expenditures relating to upkeep of grounds, including snow removal. It may or may not be based on a per unit charge but the total must be identified.

MAINTENANCE COSTS - VARIABLE

#______ UNITS X $ _______ PER UNIT X 12 MONTHS = $_______________

COMMENTS

This expense covers items such as winter sand, fence repair, sewer stoppages, pavement patch, minor roof repairs, common water repairs and touch up painting.

Note all these expenses may be incurred during the year, however they should be budgeted for.

Any monies spent will go to increase the maintenance reserve fund.

INSURANCE

Building - Fire and All Risk

Appraised Value ________________

Cost per $100.00 = ________________

Total Annual Cost = ________________

Liability Insurance $1,000,000.00 ________________

Directors Liability Insurance ________________

COMMENTS

UTILITIES

Security Lighting ____X 4.50/m x 12 = $______________

Lawn Water Estimate ______________

Winter Meter Service Charge ______________

Meter Deposits @ $25.00 each ______________

Meter Application @ $6.50 ______________

Maintenance Building Heat ______________

Power ______________

TOTAL UTILITIES $

================

COMMENTS

BANK CHARGES AND INTEREST $ ____________________

COMMENTS

PHOTO-COPYING $ ____________________

COMMENTS

ANNUAL MEETING

HALL RENTAL $ ____________________

REFRESHMENTS $ ____________________

NOTICES $ ____________________

TOTAL ANNUAL MEETING $ ____________________

COMMENTS

LEGAL $

===================

COMMENTS

AUDIT $

====================

COMMENTS

HONORARIUM $

====================

COMMENTS

SUNDRY $

====================

COMMENTS

MAINTENANCE RESERVE

# UNITS ____________ X $ ______________ X 12 = $ ___________________

COMMENTS

5.7 FROM A FINANCIAL PERSPECTIVE

Introduction

The operations of a condominium corporation are under the control of its Board of Managers which has the responsibility for maintaining and regulating use of the common property and for the accurate recording of transactions relative thereto and the preparation of financial statements, reporting to owners on the financial position of the corporation and the results of operations during the period of the Board's stewardship. Although the function of day to day administration is usually delegated to a managing agent, the responsibility still rests with the Board to oversee duties delegated to the manager and to take reasonable precautions to ensure that the complex is being properly maintained and administered.

The Board's fianancial and fiduciary responsibilities include designing and maintaining accounting records and internal control procedures, selecting and applying accounting policies, safeguarding assets and preventing and detecting fraud and error.

Financial Statements

In order to understand any set of financial statements, one must have a basic comprehension of the underlying records i.e., the "books". (O/H 1) The financial statements are the final end product, if you will, of the accounting system in place. If the accounting records are excessively simplified, by extension, the financial statements generated therefrom will be likewise. It is preferable therefore that the system be comprehensive - but efforts should be made to render the reports generated therefrom simple to understand, yet meaningful.

A monthly cash receipts and disbursements statement is the simplist form of report to prepare and to understand but such a report may be deficient due to the fact that some financial transactions affect asset and liability accounts, and do not affect operations per se. A cash flow statement does not take into account timing differences related to income earned or expenses incurred. Amounts reflected in the cash statement can therefore be factual but, because of inherent deficiencies, a review of this statement may lead to flawed conclusions.

If the financial statements are prepared by the auditor, he may make suggestions as to the form or content of the financial statements or he may draft them, in whole or in part, on the basis of management's accounting records. However, financial statements always remain the representations of management. Such being the case, they should be closely reviewed by the Board. Any questionable matters arising from this review should be discussed with the auditor in order that the financial statements, in final form, are completely understood and satisfactory to the Board.

Annual Budget

In order to accomplish its intended purpose, the corporation must raise sufficient funds to carry out that work which is deemed necessary by the Board. This is accomplished by leving an annual assessment on unit owners, the amount of which is determined through the annual budget process, one of the most important functions of the Board.

The annual operating budget is a significant financial planning tool which should:

1. accurately project the following year's anticipated expenses, in order that sufficient cash is available to meet such expenses and
2. establish a standard of performance or benchmark, which the property manager can be guided by and is expected to adhere to. If proper attention and consideration has been devoted to budget procedures and preparation, and proper accounting procedures and controls are in place, those charged with the responsibility for day-to-day operations can virtually "take the ball and run with it" i.e. the Board should be able to monitor the financial affairs on "an exception only" basis whereby direct involvement is necessary only if unanticipated difficulties are encountered. This seems the most productive and efficient way of administering day to day operations and requires the least amount of "hands on" attention on the part of the Board of Managers. This in turn permits more attention to be devoted to those matters which, by their nature, require significant input and/or consideration on the part of the Board.

eg.-budgeting and management of financial resources, as discussed above
-selection of service suppliers, the most important of which is clearly the managing agent
-establishing controls and safeguards to protect the corporation's assets

-ensuring the long-term financial stability of the corporation, which includes, first and foremost, an annual evaluation of the adequacy of the reserve for major repairs and replacements

-fostering an "open door" approach to fellow owners and dealing with their practical concerns.

Reserve for Major Repairs and Replacements

Appendix 1 of the Condominium Property Act of Alberta states that:

1. The Board shall establish and maintain a "Capital Replacement Reserve Fund" to be used for the repair or replacement of ... common property, when the repair or replacement does not occur annually.
2. The Board may by resolution determine the minimum amount that may be paid from the Capital Replacement Fund in respect of a single expenditure.

What is the "Reserve"? How is it calculated? Why is it needed? How does "a reasonable and prudent Board member determine its adequacy?

In order to fully comprehend the term "reserve", one must distinguish between two basic aspect thereof:

a) Calculation of (for provisions for)

b) Funding

a) Reserve Calculation (and Annual Evaluation)

In order to initially calculate the reserve requirement, and subsequently evaluate its adequacy, it is necessary to ascertain which components of the common property will require major repair or replacement, and to determine the estimated useful life and remaining life expectancy of such components and the projected replacement cost as at the date of replacement. Determination, by the Board, of a condominium corporation's reserve requirement and the annual evaluation of its adequacy is based on numerous assumptions as to future events. Although individual calculations can be precisely determined due to the several variables involved and the long term nature of the reserve. Reserve calculations must therefore be reviewed annually and, where necessary, updated to take into account changes in estimated replacement cost and previous assumptions made as to the life expectancy of reserve components. Actual experience, in terms of the nature of repair expenditures encountered and costs incurred, should be taken into account during the evaluation process.

Detailing the various components is important not only for purposes of determining and evaluating the reserve requirement but also for purposes of rationalizing the annual reserve assessment. If the reserve is not calculated in sufficient detail to support the annual assessment levied on owners, it will become increasingly difficult for succeeding Boards to justify the continuous and systematic build up of funds.

Once the overall reserve requirement is determined, in the manner described above, the projected replacement cost of each component will be amortized over the estimated useful life, (normally using the straight-line method) thereby yielding the total amount which must be provided for annually i.e. the annual reserve assessment.

b) Reserve Funding

The cumulative aggregate of all amounts assessed throughout the period(s) of time contemplated in the reserve study calcualtions should utimately provide sufficients funds to finance the projected cost of major repairs and replacements. This will not be the case, however, if the corporation has not clearly defined those items allocating costs between operating and reserve funds.

Reserve funds are typically separated from operating funds (respective bank accounts are established for each fund) but, in practice, the reserve account is not "untouchable" for purposes unrelated to reserve expenditures. "Borrowing" from the reserve fund on a temporary basis is not an unreasonable procedure so long as the Board realizes that such "borrowing" has taken place and that the reserve fund must be restored. For example, if certain items of an operating nature are due for payment and insufficient operating funds exist to cover, it is not uncommon that funds are transferred from the reserve account to the operating account. A rather obvious reserve problem will exist however if the borrowed funds are not restored, either automatically (timing difference only) or otherwise by special assessment or by inclusion of a restoration item in the following year's budget. In the absence of corrective action, the reserve can become permanently impaired or eroded.

The usual causes of reserve fund erosion are:

a) operating deficits of current and/or prior years.

b) charges to the reserve (expenditures) which exceed the amount of funds accumulated for such purpose.

c) charges to the reserve for repairs which were never contemplated and have therefore never been funded.

(Note)

The monthly transfer of operating funds to a savings or investment acount in an amount equivalent to the budget reserve provision serves no useful purpose if the reserve funds are not essentially considered segregated i.e. if the funds are simply transferred back to the operating account (often in the same month) to cover operating requirements. The point is - the corporation should strive to maintain a fully funded reserve but reserve funding should be viewed from the perspective of annual operations, consistent with the budget time frame. On an interim basis, all funds surplus to operating requirements should always be invested and earning income, which will partially offset the effects of inflationary increases in future costs.

Year Ends

Fiscal year ends are initially chosen by the first Board of Managers but can be any month of the year (any day of the year, for that matter) and can be changed if desired. The majority of condominium corporations have December 31 year-ends simply because this date coincides with the end of the calendar year.

Internal Accounting Controls

Internal accounting controls are designed to:

1) Safeguard the corporation's assets from loss by fraud or by

unintentional errors;

2) Assure reliability of the accounting data which management may use in making business decisions; and

3) Promote operational efficiency and encourage adherance to adopted policies.

Examples of internal control procedures include:

a) Involvement of two or more persons in bank transactions
b) Reconciliation of account balances with third party statements
c) Separation of duties between those who handle cash and those who are responsible for recording cash transactions
d) Cancellation of original source documents, upon payment of same
e) Monthly financial reporting, including budget comparison
f) Fidelity bonding, and insurance generally

Fidelity Bonding

Fidelity bonding is a form of insurance which will compensate the corporation in event of loss resulting from dishonest actions on the part of those who control the corporation's liquid assets.

The appropriate form of fidelity bond for a condominium corporation has the following attributes:

1) The condominium corporation is the named insured - hence the corporation controls the bond. All communication from the insurer relative to the bond is directed to the Board of Managers and should a claim under the policy be necessary, all significant aspects thereof will be left to the discretion and the direction of the Board. The bond

cannot be cancelled without notification to the corporation.

2) Employees as defined, should include all persons handling or controlling the corporation's funds. This would include principals of the managing agent, and the Board of Managers if applicable.

3) Limits of coverage should be equivalent with the maximum amount of exposure to loss (and/or the amount required under the corporation's by-laws) and should be reviewed annually.

Condominium Corporation Standard Books of Account

GENERAL LEDGER

Records summary amounts transferred from sub-ledgers and cash synoptic, for each account description applicable; balances are maintained on a cumulative monthly basis

CASH SYNOPTIC

Register of all cheques and deposits, with accompanying details

ACCOUNTS RECEIVABLE SUB-LEDGER

Records details of all amounts assessed, and payments received by date, unit #, amount

ACCOUNTS PAYABLE SUB-LEDGER

Records details of all service and/or supply charges incurred, and payments made - by date, supplier, amount

PAYROLL SUB-LEDGER

Record of wages paid plus related payroll costs, by individual employee and department

JOURNAL SUB-LEDGER

Record of all adjustments made to general ledger

FIXED ASSETS SUB-LEDGER

Records details of major assets acquired, for control, insurance and maintenance purposes

Suggested Minimum Reporting Requirements

Balance Sheet	All assets and liabilities
Statement of General Operations and Reserve Operations	Revenue and expenses for the current month and year to date, with budget comparisons
Listing of Cheques Issued	Date, payee, amount and account description
Bank Reconciliation(s)	With a copy of bank statement(s)
Listing of Assessments in arrears	By unit #, name and amount

5.8 Common Questions Raised by Condominium Owners

Below are a list of common questions raised by condominium owners:

Question page

1. Who Owns the Common Property? 89

2. Who Owns the Money in the Bank? 89

3. What are the Board of Managers Financial Responsibilities? 89

4. What Financial Records Does the Corporation Need? 90

5. What Should an Audit Do For You? 91

6. Why are Budgets Needed? 94

7. What Internal Control Accounting Procedures Should be Followed to Ensure Protection of the Corporation's Assets? 95

8. Are Low Audit Fees Good Audit Fees? 96

9. What is the Difference Betweeen the Cash and Accrual Methods of Accounting and Which is Recommended? 97

10. What are Reserves? 98

11. What Can an Owner do to Confirm That the Corporation is Being Properly Managed? 99

12. What is a Suggested Format for the Annual Audited Financial Statements and What do They Tell Me? 99

13. Does the Corporation Have any Corporate Income Tax Returns to File? 101

1. Who Owns the Common Property?

The real property and equipment (common property) encompassed by a condominium is paid for and owned collectively by the owners at the time of purchase of their unit, and is not an asset of the corporation. Included in these common properties are such things as the plumbing, electrical and mechanical systems of the buildings. The corporation's duty is to repair and maintain the landscaping, buildings, roof, elevators, outside drainage and other common elements it does not own, including assets acquired on behalf of the owners.

2. Who Owns the Money in the Bank?

The money in the bank is owned by the corporation and any reserve funds or accumulated underexpended general assessments are not available for distribution to the owners. Once these funds are received by the corporation they can only be used to pay for annual operating costs or placed in a reserve fund which has been created for specific purposes.

3. What are the Board of Managers financial responsibilities?

The main financial responsibilities of the Board of Managers are as follows:

1. To maintain adequate financial records.
2. To prepare internal unaudited financial statements on a monthly basis and present audited financial statements to the owners on an annual basis.
3. To document and approve financial decisions in the board's minutes.

4. To prepare and have approved the budgets for general operations, major repairs, and replacements, capital expenditures and other items (such as legal fees for an anticipated dispute).

6. To obtain and periodically update the technical evaluation of reserve calculations (where deemed reasonable).

7. To properly protect the assets of the corporation through the implementation of adequate internal control over the accounting procedures.

8. To obtain adequate insurance for the corporation.

9. To properly identify the types of expenditures that are to be funded by the various reserve funds.

4. What Financial Records Does the Corporation Need?

The corporation needs the following financial records:

1. An unpaid invoice file to hold all invoices awaiting proper approval.

2. A paid invoice file with the invoice marked with the cheque number, the amount paid, the date paid and properly signed or initialled for approval for payment.

3. If there is a payroll, the corporation should have a payroll journal, an earnings card, approved time sheets, tax deduction declarations and a record of the employees name, address, social insurance number, age, rate of pay and dates commenced and terminated employment.

4. An assessments receivable sub-ledger which indicates the dates of

assessments, interest, N.S.F. charges and returned cheques and miscellaneous items charged and records of amounts and dates of payments for each unit.

5. A monthly bank reconciliation accounting for the difference, if any, between the amount shown on the bank statement and the amount shown in the corporation's general ledger.

6. A monthly list of term deposits held in the corporation's name which in total agrees to the corporation's general ledger.

7. A cash receipts and disbursements journal kept on a monthly basis and posted to the general ledger on a monthly basis.

8. A general ledger which shows the balance at the end of each month for the corporation's assets, liabilities, reserves, revenues and expenses.

9. Monthly financial statements including a balance sheet (compared to last year) a statement of general operations (compared to budget and last year preferably) and a statement of each reserve fund (compared to last year).

10. A detailed record of the decisions made and criteria used in the preparation of each years budgets.

11. A fixed asset ledger which keeps a list of each asset owned by the corporation along with details of the date of purchase the amount and from whom it was purchased.

5. What Should an Audit Do For You?

An audit of the annual financial statements should do the following for you:

1. It assists in evaluating the stewardship the Board of Managers is providing the corporation by showing the reserves accumulated, the amount of uncollected assessments, the corporation's liabilities and the actual results of operations compared to the amounts projected in the approved budget.
2. It provides a purchaser with information on his proposed investment.
3. It may be requested by a mortgage holder on a unit.
4. It is, in the majority of cases, required by the by-laws of the corporation.
5. It confirms to the owners the adequacy of the records maintained by the Board of Managers to protect the assets of the corporation.
6. It provides information concerning possible liabilities of the corporation (lawsuits, reserve requirement estimates, etc.).
7. It will identify any fraudulent acts.

It is the duty of the auditor of the corporation to report to the owners whether, in his opinion, the financial statements presented by the Board of Managers at any annual meeting during his term of office have been prepared fairly in accordance with generally accepted accounting principles consistently applied. This opinion, however, does not apply to the budget figures since they are essentially unverifiable.

Before an auditor can give an opinion concerning the fairness of the financial statements, the following must be completed.

1. The records of the corporation must be examined, analyzed and verified.

2. It must be verified that the system of internal control is adequate to provide protection of the corporation's assets and to produce accurate financial statements.

3. Verification of all receipts of all funds and disbursements of funds to supporting documentation must be made.

4. Verify that transactions have been properly approved by verification of accounting records and signed minutes of Board of Managers meetings.

5. All transactions and balances in the financial statements appear reasonable in the circumstances.

6. Determine that all assets of the corporation exist and are owned by the corporation.

7. Determine that all liabilities of the corporation are recorded in the financial statements.

8. Verify that no material fraudulent acts have been committed.

9. Physically examine the condominium site and inspect the major projects completed during the year.

10. Inquire of outsiders (lawyers, engineers, insurance agents, etc.) as to the existence of any potential unrecorded liability and where applicable, include the details in a note to the financial statements.

11. Where deemed reasonable some of the verification can be done on a test basis which will identify an, problemns which would be of material concern to a reader of the financial statements.

12. Obtain an engagement letter from the Board of Managers which specifically outlines the duties to be carried out by an auditor.

13. Obtain a letter of representation from the Board of Managers which indicates that all the financial records and information the auditor needs to properly complete his audit and preparation of the annual financial statements have been made available to him.

14. Advise the Board of Managers that it is their responsibility to ensure the reserves are being properly funded through the assistance of professional advisors as necessary. The auditor will report to the owners in the notes to the audited annual financial statements the situation concerning the reserves.

6. Why are Budgets Needed?

Budgets are needed for the following reasons:

1. Budgets compel planning and greatly assist in keeping the corporation out of serious financial trouble.
2. They indicate that the course of action set out by the Board of Managers has been approved.
3. They indicate the level of service the owners can expect over the next year.
4. They allow for the accumulation of funds the corporation will need to pay for major repairs and replacements of common property,

capital acquisitions (tools, playground equipment, etc.), other requirements (such as anticipated large legal fees to fund a dispute with the developer) and a contingency fund to have money available for unexpected large expenditures that arise.

5. They set the level of individual assessments for the year.

6. They provide communication and coordination among all member of the condominium.

7. They help to evaluate the stewardship of the Board of Managers.

8. They provide a tool for the Board of Managers to measure the actual results against those in the budget and to immediately take any corrective action needed.

An annual budget should be prepared for general operating, major repairs and replacements, capital additions, other expenditures and contingencies. The budget for the major repairs and replacements should be supported by up to date technical recommendations. The budgets should be prepared in the same format as the financial statements and should be on the accrual basis.

The details of any technical advice or assunptions used in the preparation of the budgets should be kept on file to assist future boards with the continuation of the proper budget process.

7. What Internal Control Accounting Procedures Should be Followed to Ensure Protection of the Corporation's Assets?

The following are components of an adequate system of internal control:

1. Maintain all the corporation's monies in accounts in the name of

the corporation.

2. Reconcile revenues received as per the financial statements to the budget. Investigate differences.

3. For owners with old accounts receivable, have caveats registered against their property and have interest, N.S.F. charges and legal costs added to the amount receivable.

4. Ensure, by examination of disbursements each month, that none of the surplus has been distributed to the owners.

5. Add interest earned on reserve fund term deposits to the reserve fund.

6. Only use reserve funds for the purposes that the fund was set up for.

7. Obtain expert technical advice concerning the reserve requirements.

8. Insure the condominium to the reasonable values recommended by the corporation's appraiser.

9. Authorize all expenditures before work is requested and approve all invoices, in writing, before payment. Mark all invoices paid with the cheque number, amount and date paid.

10. Compare monthly financial statements to the budget and investigate any differences and take any corrective action.

8. Are Low Audit Fees Good Audit Fees?

Audit fees will fluctuate with the quality of records, size internal control and degree of director involvement of the condominium. A reasonable range of audit fees for a year end financial statement for a condominium with annual assessments of $75,000 to $100,000 would be $600 to $800. A properly trained and qualified accountant (normally a Chartered Accountant) should be used to ensure the audit is carried out properly and the owners and board of managers receive the proper information.

Low fees are not necessarily good fees because the work required to be done to protect the condominium through a proper audit may not be accomplished by an accountant with the low fees.

To properly choose an accountant, determine what you want an audit to do for you and then find an accountant that is qualified and understands auditing of condominiums.

9. What is the Difference Between the Cash and Accrual Methods of Accounting and Which is Recommended?

Under the cash method of accounting, revenues are recorded when received and expenses are recorded when paid. Under the accural method of accounting, revenues are recorded as they are earned (regardless of when received) and expenses are recorded as incurred (regardless of when paid). The accrual method is recommended for preparation of financial statements and budgets since they are more accurate, comparable to other condominiums and show a better comparison of actual amounts to the budgets.

10. What are Reserves?

Reserves are an accumulation of cash to provide for eventual major repairs and replacements, purchases of capital equipment (e.g. machinery) other anticipated liabilities (such as large legal fees) and contingencies (large expenditures not covered by the other reserves or the general operating budget).

The items to be purchased with these reserve funds are to be specifically identified (except for the contingency funds) and, where applicable, should be accurately estimated and documented with the assistance of expert professional advisors (updated as reasonable).

These funds are for major items not occurring annually and without a fund, there would be a major problem raising enough cash for repairs or replacements (such as roofs). The current owners should be contributing to this fund because they are receiving the benefit of the assets currently as they are being being worn out. It is reasonable then that the current owners contribute to these funds for future expenses.

Interest income on the fund term deposits should be added to the fund.

These funds can be lent to the operating fund to pay for current shortfalls but these funds must be repaid from general assessments or special assessments.

Items which may be included in the reserve would be:

a) land improvements,

b) foundations, walls, roofs, stairways, hallways and other parts of the structure,

c) mechanical, plumbing and electrical equipment and

d) recreational and other facilities.

11. What Can an Owner Do To Confirm That the Corporation is Being Properly Managed?

An owner can accomplish this by:

1. reading the auditor's report commenting on the corporation's annual financial statement.
2. Reading and analyzing the annual financial statement.
3. Reading and analyzing the monthly internally prepared unaudited financial statement.
4. Preparing questions for the board of managers.
5. Attending the annual general meeting and ensuring acceptable answers to the prepared questions.

12. What is a Suggested Format For the Annual Audited Financial Statements and What Do They Tell Me?

A suggested format is set out in the sample financial statements included in this material.

The financial statements should tell you the following:

a) Auditors report-this is the first page of the financial statements and gives the auditors opinion. Ensure his opinion is affirmative or you have a serious problem to be resolved. In the event of a dispute between the board of managers and the auditor concerning any item, the auditor must disclose the disagreement or resign from the engagement. If there has been a change in auditors during the year, an acceptable reason for the change should be obtained from the board of managers. This report will also indicate the qualifications of the auditor (i.e. Chartered Accountant).

b) Balance sheet-the top half of the balance sheet identifies the corporation's assets (what it owns). Each item should be compared to last year and any major changes should be questioned (i,e, - a large increase in assessments receivable). The funds held in cash and term deposits for the reserve funds should be equal to the reserve fund or an explanation should be received. Any shortage means the fund is not completely liquid (not able to presently pay for all the items it has been set up for). The liability section (middle of the balance sheet) shows the amount the corporation owes and the difference between the assets and liabilities shows the balance of the assets remaining that the corporation can use for its reserve requirements and any balance or shortage remaining in the accumulated general assessment.

c) Statement of general operations-this statement shows the results of the general operations of the corporation over the last year compared to the current budget and last years operations. Just for current operations, (not including the reserve fund receipts and disbursements) it shows total revenue earned and total expenses incurred. Careful comparison of three amounts should be made and any serious deviations should be questioned. This report shows the stewardship of the board of managers.

The balance at the end of the statement shows the accumulated amount the corporation has either over or underexpended the general operating revenues.

d) Statement of Reserve Operations-this statement shows the current budget, current actual and previous years actual amounts for the reserve for the year. The funds put into the reserve are at the top of the statement, the amounts and description of expenditure is outlined in the middle along with the accumulated balance of the fund. The information at the bottom of the statement shows what the funds are being accululated for.

e) Statement of Changes in Financial Position-this statement consolidates the general operating and revenue statements into one to show the overall revenue and expenditures of the corporation and the net growth or reduction in the size of the corporation (net assets).

f) Notes to the financial statements-this is vital information needed to understand the financial statements.

13. Does the Corporation Have Any Corporate Income Tax Returns To File?

The corporation is required to file federal and provincial income tax returns within six months of its year end even if it does not have any taxes to pay. The penalty for not filing the returns is 5% of the unpaid taxes plus 1% per month to a maximum of 17% (5% plus 12%).

Since almost all condominium corporations have no tax to pay, there is no penalty for not filing.

A condominium will only become taxable if it accumulates reserve funds which are much too large or if it engages in business activities not related to the original purpose of the corporation.

It is recommended that federal and provincial corporate income tax returns be filed on an annual basis showing taxable income and taxes payable at NIL.

6.0 INSURANCE

6.0 INSURANCE

The following pages are a guideline as to what the Board of Managers should look for when purchasing insurance. The Board should study their by-laws and the Condominium Property Act to ensure they are getting the proper coverage.

6.1 OUTLINE OF NEEDED INSURANCE

A basic insurance program for the Condominium Corporation comprises:

"All Risks" Property Insurance

This insurance is intended to provide the board with funds if there is physical damage to the units or common property. This insurance must not only meet the requirements set out in the Condominium Property Act and in the board's By-Laws, it necessarily must be as sweepingly broad as possible to protect the members against the widest foreseeable range of catastrophic potential damages.

Example: A fire burns out a unit. The Corporation's policy must pay for the cost to fully repair the damage and to restore the unit including all that which comprised the unit as it existed when the place was registered as a Condominium.

Example: A particularly severe rainstorm causes an inherently weak catch basin to collapse, resulting in the subsequent undermining by escaped water of the underground services piping and wiring. The Condominium's policy must pay for the resultant damage.

Example: Vandals break windows. If the Condominium By-Laws make window damage the duty of the board to insure, the the Condominium's policy must pay for the glass repair.

Comprehensive General Liability Insurance

This is supposed to protect the board, its officers, employees and unit owners while acting on behalf of the boards against claims alleging bodily injury, property damage and "personal injury" (libel, slander, false arrest, wrongful eviction, etc.) and must include protection for such risks as those posed by the existence of parking, the common facilities, road, walkways, etc.

The insurance must not only protect the board against liability under common law, "Tort Liability", but also liability assumed by the board under contracts and agreements, "Contractual Liability".

The amount of coverage must be reviewed by the board to make sure it keeps up with the larger lawsuits becoming more prevalent these days.

Example: A sidewalk goes tilty, having settled. The board does nothing about it. A visitor stubs a toe, falls on his head rendering him a quadriplegic, and sues. The Condominium's insurance must meet the lawsuit, which could be substantial.

Example: A board member or a unit owner acting on behalf of the board rents a ladder to do some maintenance for the Corporation. Someone falls due to a rung in the ladder failing, is injured and sues everyone in sight-the board, all its members, the unit owner and the ladder rental company. The Condominium's insurance should meet the entire claim, including that part involving the rental company if the rental agreement included a "hold harmless" or "indemnity clause".

Example: A child, perhaps horseplaying, or just wanting to take the seemingly quickest route, climbs a fence and suffers injury in his attempt. In this day and age of litigiousness, a lawsuit is filed against the board for the child's injuries. The insurance taken out by the board must meet the lawsuit.

Bond

The board and its members are entrusted with funds including the reserve fund, which should be growing. Every board member and every employee of the Corporation should be bonded automatically. It usually takes more than the treasurer or the president alone to carry out a substantial embezzlement, so "blanket" bonding is essential. Also, bonds cover the loss of property other than money.

Example: A treasurer sets up an account for a dummy supplier and gets board approval to pay the supplier's account from time to time. When it is discovered that the services or supplies which were paid for don't exist, a fraud has been discovered. The bond must make good the loss.

Example: A board member in charge of maintenance is padding the purchases to keep his brother's painting contracting company in paint. "One for me - one for the Corporation" kind of thing. When discovered, the bond must meet the loss.

Example: The reserve funds disappears, along with a board member or two. The bond must meet the loss of funds.

Example: An employee charges up things to the Corporation, living high, then takes off. The bond must meet the Condominium's financial loss.

Directors & Officers Liability Insurance

This protects the board and its members against claims alleging a wrongful act was an actual or alleged breach of duty; neglect or error by or accountability of the directors and/or officers; and any actual or alleged misleading statement or other act or omission by the directors and/or officers in their capacities as directors and/or officers. Because of the developmental state of this field of law, this insurance must necessarily be as broad as possible in anticipation of the potential for new and wide-ranging forms of litigation by claimants, usually unit owners.

Example: A unit owner sues the board and all its members because he feels the value of his unit is diminished due to the board allegedly not carrying out something it should have done. The condominium's insurance must pay the costs of defence and, if the board or members of it are ultimately found liable, to meet the amount of the claim.

Example: Some act or omission of a previous board results in a surprise new lawsuit against the current board. The condominium's insurance must defend the board as well as those making up any previous boards who are named in the lawsuit, and if anyone is ultimately found liable, to pay the judgement award.

Umbrella Liability Insurance

Provides liability protection against claims alleging:

Personal Injury:

Bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful entry or eviction, detention, malicious prosecution, discrimination (unless prohibited by law), humiliation, libel, slander or defamation of character or invasion of rights of privacy, including death.

Property Damage:

Physical injury to, destruction of or loss of use of tangible property.

Advertising Liability:

Libel, slander, defamation, infringement of copyright, title or slogan, privacy, unfair competition, idea misappropriation or invasion of rights of privacy committed, or alleged to have been committed, in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's advertising activities.

The policy extends to protect:

Board members, employees of the condominium corporation, if any, and unit owners, all while acting on behalf of the board.

Any other person, organization, trustee or estate to whom or which the board is obligated by virtue of a written contract to provide liability insurance with respect to condominium corporation operations.

An Umbrella Liability Policy rests on top of "Underlying Insurance". In the case of a condominium corporation, the underlying insurance is the corporation's Comprehensive General Liability policy. The Umbrella Liability policy extends the limits of the underlying insurance so that, for example, a $4,000,000 Umbrella policy on top of a $1,000,000 Comprehensive General Liability policy results in a total of $5,000,000 of general liability protection.

In addition, an Umbrella Liability policy is broader. It insures against more kinds of liability exposure. So the end result is higher and broader protection.

Boiler & Machinery

Included in this class of insurance is coverage to pay for damage to:

Boilers
Cushion, Expansion Tanks
Hot Water Tanks
Pumps, Compressors
Fans, Blowers, Shafts
Motors
Switchgear
Transformers

arising out of what the insurance policies define as an "accident." An "accident" is defined as a sudden and unplanned occurrence to any of the insured objects that necessitates repair or replacement of the object. Not covered is the normal functioning of safety devices, leakage, corrosion, gradual deterioration, etc. In the policy is a "Direct Damage Limit" which should be sufficient to pay for repair and replacement of the object and the damage it causes.

Additional desirable coverages include:

-Expediting Expense-the extra cost to rush replacement items. An example is a one-of-a-kind component that must be flown in from the manufacturer.

-Extra Expense-the extra cost over and above the normal cost of maintaining building services due to the occurrence of an Accident. An example is the cost of temporary heat in event of a boiler failure in winter. This could even involve the tieing in of a temporary skid or trailer-mounted boiler, the expense of which could be substantial.

Ideally, the Boiler & Machinery insurance should be with the same insurer as provides the balance of the property insurance. This way, if there is a massive furnace room explosion, insurance claim settlement won't be delayed by having to pinpoint exactly what caused the explosion and, hence what insurance company must pay.

Of course, like the "All Risks" Property Insurance, the Boiler & Machinery Insurance must be on a replacement cost basis.

ACCIDENTAL DEATH & DISABILITY INSURANCE

The Canadian Condominium Institute is pleased to make available to its members an accidental death and disability insurance plan providing the following benefits:

Loss of Life Pays the principal sum in the event of the accidental death of an insured person while and in consequence of performing duties on behalf of the board of the Condominium Corporation independent of any other cause.

Loss of Life Limit $10,000 per insured person
$50,000 aggregate limit

Alternate $20,000 per insured person
$100,000 aggregate limit

Disability Pays the amount of weekly indemnity-$250-in the event of the total disability of an insured person due to accident while and in consequence of performing duties on behalf of the board of the Condominium Corporation independent of any other cause.

Disability Limit $250 per week for up to 52 weeks

Beneficiary Benefits payable in the event of the loss of life of an insured person are payable to the estate of the insured person. All other benefits payable are payable to the insured person.

Insured Person Each board member and /or unit owner of the insured Condominium Corporation while performing duties on behalf of the Condominium Corporation.

6.2 PROPERTY AND LIABILITY INSURANCE COVERAGE CHECK LIST

The Property Insurance policy should include

-As Insureds:

"The Owners: Condominium Plan No. ________________"

The board of the Condominium Corporation

Unit owners as at present or may be from time to time

The Insurance Trustee, if one is appointed

-"All Risks" replacement cost physical damage coverage

-"Blanket Property" coverage-broad description of property covered

including improvements to units where Bylaws require board to carry improvements coverage

-No freezing exclusion

-Unlimited vacancy allowed

-Damage by sewer backup covered

-All original carpeting and flooring covered

-Foundations, footings, underground services covered

-Increased cost of reconstruction due to building By-laws covered

-Waiver of insurer's right to repair if so required by the By-laws

-Earthquake and flood covered

-No "foundation" exclusion

-No underground services exclusion

The Liability Insurance policy should include:

-Premises, property, operations liability

-Completed operations, products liability

-Non-owned auto liability

-Medical payments

-per person	$ 2,500.
-per occurrence	$25,000.

-As insureds all those shown in property section for their liability arising out of the operations of the board including

unit owners and any employees when acting on behalf of the Condominium Corporation

-Cross Liability

-"Personal injury" coverage:

a) false arrest, malicious prosecution or willful detention or imprisonment;

b) libel, slander or defamation of character;

c) invasion of privacy, wrongful eviction or wrongful entry

-Blanket contractual liability

-"Occurrence" property damage

-"Broad form" property damage

-Contingent employers' liability

6.3 CONDOMINIUM CORPORATION INSURANCE

10 MOST COMMON PROBLEMS

	PROBLEM	SOLUTION
1.	Name of insured set out wrongly	The name of the insured must include the legal name of the Condominium Corporation: The Owners: Condominium Plan No. ____
2.	Property policy claims payment direction is to some mortgage company	Property policy claims must be payable to the Condominium Corporation which must use the proceeds for the restoration of the damaged property or as otherwise prescribed by the Act and By-Laws
3.	Property policy contains a 90% coinsurance clause	Virtually all By-laws prohibit this. A "stated amount coinsurance clause", correctly arranged, is the answer
4.	Damage by freezing is excluded in property policy	Get the exclusion removed or the policy replaced
5.	Damage by earthquake and flood is excluded in property policy	Get the exclusion removed or the policy replaced. It is when such remote but devastating risks occur that insurance is most needed

6.	Inadequate liability insurance	Get more. Some By-laws call for: $1,000,000 bodiliy injury and $1,000,000 property damage liability insurance. Lawyers say that this means the board should be carrying $2,000,000 in inclusive limits
7.	Absence of directors & officers liability insurance	Get it
8.	Inadequate directors & officers liability insurance, i.e. with no retroactive coverage; not covering, committee members, volunteers, employees; with insurance exclusion.	Get a good policy
9.	No bond on board	Get one
10.	Restriction to depreciate (Actual Cash Value) settlement in property insurance if board by unanimous resolution or by court order, does not repair or replace damaged or destroyed property. Option of insurance company to carry out replacement upon giving seven days notice	Act does not provide for depreciated settlements. Many by-laws actually stipulate that no matter what, settlement must be on replacement cost value basis. Have policy tailored to match By-laws.

6.4 BOARD INSURANCE DECISIONS

1.	Deductibles	Who pays? The board or the unit owner?
2.	Improvements	Who insures? The board or the unit owner?
3.	Appraisals	Annual revision service?
4.	Insurance Trustee	Needed? If so, when?
5.	Optional Coverages	Glass
		Improvements coverage
		Rental income
		Liability limits
		Umbrella liability
		Bonding
		Directors & Officers liability
		Accident insurance
6.	Insurance By-laws	Review
		Compliance
		e.g. stated amount coinsurance-"only if and so long as the appraisal requirement is met" is common in By-laws but wrong.
		Indemnification clause
		Cash settlement options
		Liability limits
7.	Building condition report	
8.	Tenants' Insurance	Should they be required to carry it?
9.	Workers Compensation	A requirement for all self managed condominiums

BOARD INSURANCE DECISIONS-NOTES

DEDUCTIBLES

Rate saving feature

Deterrent

Choices of application:

1. FOLLOW THE BY-LAWS

The unit owner has the duty to repair and maintain the unit. Therefore all damage to the unit is for the unit owner to attend to. Thus the deductible, being part of the repair cost, is for the unit owner to bear.

Usually the By-laws require the corporation to repair and maintain the common property, the exteriors of the units and the pipes, wires and cables that serve more than one unit. Therefore the corporation pays for the deductible when these are damaged.

2. MODIFIED BY-LAW COMPLIANCE

Where the cause of the loss is outside the unit, the corporation could consider paying the deductible, even if all the resultant damage is in a unit or units. After all, the corporation had the duty to maintain the property outside the unit, so it is reasonable to expect the corporation to pick up the deductible.

3. SHARED DEDUCTIBLE

The unit owner would bear $100 of the deductible, putting him in the same position as a single family homeowner or tenant, the corporation would bear the balance.

However, the Insurance Bureau of Canada new standard deductible is $200 and insurance companies are involving this new standard, in most cases, as present printed policy supplies run out.

4. "THE BOARD TOOK OUT THE INSURANCE, SO THEY SHOULD BEAR THE DEDUCTIBLE"

This is like saying that because employers purchase group insurance for the benefit of their employees, the employer should pick up all major medical deductibles. Obviously all major medical plans would stop immediately if this were the case.

The board has a statutory duty to buy the insurance on the units and common property. This is for the common good-it ensures that there is replacement cost basis unsurance on the whole development and that fire or other damage will be repaired. But the duty to repair and maintain the unit still rests with the unit owner. So the unit owner utilizes the proceeds of the group purchased insurance, picking up the deductible area.

5. THE CASE BY CASE APPROACH

Each case is weighed on its own merits by the boards or Insurance Trustee

STANDARD DEDUCTIBLES:

The most common deductibles in present policies or coming into common use in 1986 are in bold print.

Glass	$25, **$50**, $100 or $250, at the choice of the board Some corporations do not insure the glass.

Note: Condominium Property Act Section 7 says all doors and windows of a unit are part of the unit unless otherwise stipulated in the condominium plan.

Earthquake	$5,000, $10,000, $25,000, or 2%
Flood	$5,000, $10,000 or $25,000
Water Damage	$250, $500, $1,000, $2,500
Vacant Units	$250, $500, $1,000, $2,500
Other claims	$250

IN CASE OF LOSS OR DAMAGE

1. Notify Insurance Agent

    Name:

    Phone: Office

    Residence

2. Protect Property From Further Damage
    - A. Turn off water supply
    - B. Turn off power
    - C. Board up openings in building
    - D. Extract water from basement
    - E. Arrange for temporary heating if loss occurs in winter weather
3. Locate complete copy of "Insurance" Adjuster

4. Locate complete set of By-laws

5. Locate Appraisal Report

6. Appoint one board member to deal with the Insurance Adjuster

7. If unit owner must vacate premises, obtain address and phone number where owner may be reached

8. If rented unit and tenant must vacate unit, obtain address and phone number where tenant may be reached

9. If unit owner or tenant must vacate unit, a board member should obtain permission to enter the unit at any time

10. If unit owner or tenant must vacate unit, a board member should obtain a key to gain entry

6.5 PROCESSING A CLAIM

I have been requested to speak to you regarding the Insurance Adjuster's role in condominium claims. I would first of all point out that I am not at liberty to discuss any particular cases. My comments therefore will be general in nature.

Following an occurrence such as a fire, a water escape or other happening that causes damage to the condominium corporation property, someone, usually the unit owner, will notify a board member of the damage. The board member will then notify the Insurance Agent, who in turn will notify the Insurance Company. The Insurance Company may then appoint an Independent Adjuster. The Adjuster is acting on behalf of the Insurance Company and investigates, negotiates, and settles the claim according to the terms of the Insurance Policy.

When we receive a claim notice, we immediately request a copy of the complete policy wording. If questions arise as to coverage, and they usually do, the policy wording provides the answers.

We will then contact a board member, usually the President or the Secretary. We learn whether or not a Property Management Firm is involved, and if so, we deal with their representative. If no management company is involved, we establish which board member we will be dealing with. Dealing with one board member not only saves everyone time, but avoids any confusion as to the loss adjustment. If required, we are prepared to attend a board meeting to give a full explanation of the loss adjustment to the board.

We would request a full copy of the By-Laws, and a copy of the appraisal on the complex.

The appraisal will prove the value of the corporation property, which in effect must be insured to the full replacement cost value. The amount of the policy is usually the amount of the appraisal, but may be higher. If you have an appraisal on your complex showing the replacement cost at $1,500,000.00, you may feel you should insure for a higher amount to take inflation into account. This is not necessary, as most policies contain an inflation guard clause and you would be paying an additional premium for no benefit.

Section 38, Sub-Section (1)-(b) of The Alberta Condominium Act states "A corporation shall, if required to do so by the By-laws, place and maintain insurance on the improvements made to the units by the owners."

The insurance policy may not show a separate amount of coverage for unit owner improvements, but the By-laws may state insurance on unit owner improvements will be provided up to a maximum amount of $5,000.00 per unit.

If this is the case, we would refer to the appraisal for the complex replacement cost and to the Policy for the amount of insurance. If we find a 20 unit complex with an appraisal for $1,500,000.00, and an insurance policy in the amount of $1,600,000.00, we would question the board member as to coverages requested of the agent. If the board did request $100,000.00 coverage for unit owner improvements, but this is not shown on the policy, we would then refer to the minutes of the board meetings. The minutes should be completed as to insurance discussions and coverages requested of the agent.

We recently had a case of this nature, and the Insurer ruled that no coverage was provided for unit owner improvements. With the By-Laws, the appraisal and a copy of the minutes, we were able to show that the board did intend to provide this coverage, and in fact had been paying the premium. The claim was paid.

We carry out a full inspection of the damaged unit or units, and prepare repair specifications. We note any unit owner improvements, and if we do not provide coverage, advise the unit owner to call his Agent.

Once we receive the repair estimates, we review them with the board member, and agree upon the contractor to be awarded the job. We, as

Ajusters, simply approve the work to be done, and the amount of the estimate. The board must authorize the contractor to carry out the repairs, and this authorization is given by the board signing a work order form. During repairs, we carry out on site inspections, to be sure repairs are progressing as they should. On occasion, additional damage may be discovered, and we negotiate the additional price with the contractor. Again, the board must authorize the additional work to be done.

Once repairs are completed, we meet with the board member to carry out a final inspection. Any deficiencies are noted, and the contractor is notified to make the corrections. When the repairs are satisfactory, the board member will be requested by the contractor to sign a Completion Certificate.

This, along with the final repair invoice, is sent to the corporation or the adjuster. A Proof of Loss is completed, showing the amounts payable, and the claim is sent into The Insurance Company for payment.

A word about payment. Under Section 38, Sub-Section (4) (a) of The Alberta Condominium Property Act, any payment made by an insurer under a policy of insurance shall be paid to the Insurance Trustee or if there is no trustee, to the corporation. The repair invoice is in the name of the corporation, and the corporation is responsible for payment.

Upon payment of a large loss, the board may be tempted to hold the funds in their trust account to earn interest. Please do not do this. It is not fair to the contractor who has completed repairs, and has paid for materials and labour.

It is also not fair to The Adjuster or The Insurance Industry, as the contractor may feel we are holding up payment. Insurance companies do wish to pay legitimate claims as quickly as possible.

Who is responsible for payment of the deductible? We are of the opinion that if the loss or damage was caused by the negligence of the unit owner, he/she would pay. The settlement to the board is less the policy deductible, and the board should demand reimbursement of the deductible if the unit owner was negligent. There may be a section of the By-Laws to deal with this problem, and I would suggest you review your own By-Laws. If there is no clause dealing with deductibles, the By-Laws may be revised.

If problems arise as to the cause of the loss or the amount of damages, we hire the services of professionals, such as engineers. We fully discuss the reports with the board member or with the board at a full meeting. If there is still disagreement, the board may hire their own expert. The two experts would then get together and arrive at a solution. Their agreement would be binding upon the board and the insurer.

As I mentioned previously, the Insurance Company does wish to pay legitimate claims as quickly as possible, and your full co-operation is required. You must be prepared to provide copies of the necessary documents, such as By-laws and minutes of board meetings, and the board member must be available to meet with the Adjuster and various contractors. Valuable time can be lost if the designated board member leaves on holidays shortly after a loss, and no one else is available to fill in.

In summary, I would stress the importance of a professional appraisal, a complete set of By-laws, and that proper minutes of board meetings be kept.

As you can see, we work very closely with the board and your assistance and co-operation is appreciated.

THANK YOU.

6.6 SUMMARY: INSURANCE ISSUES

1. CHECK POLICIES USING:

   Property & Liability coverage checklists

   10 most common problems list

2. REVIEW AMOUNTS AND LIMITS

   Property amount must agree with current appraisal

   Liability limits must meet today's needs

3. HAVE AN "INSURANCE EVENING" BOARD MEETING

   Have the broker come to review everything

   Go through a "what if" exercise

   Review the board insurance decisions

   Question the broker, get answers

   Ensure the insurance company is solid

4. HAVE THE BROKER PROVIDE CIRCULARS OR NEWSLETTER ITEMS ANSWERING COMMON INSURANCE QUESTIONS

5. HAVE CERTIFICATES OF INSURANCE ON HAND FOR UNIT OWNERS WHO NEED THEM

7.0 FORMS

7.0 FORMS

7.1 SAMPLE ANNUAL CALENDAR

JANUARY:
1. AGM HELD. NOTICES DELIVERED SEVEN DAYS PRIOR TO MEETING.

FEBRUARY:
1. AUDITOR QUOTES AND AUDITOR APPOINTED.
2. REVIEW LANDSCAPE AND NOTIFY APPROVED CONTRACTOR.
3. NEW BOARD TO REVIEW STANDING POLICIES.
4. REGISTER NEW BOARD WITH LAND TITLES.
5. INVENTORY LIST SHED.

MARCH
1. WATER TREES IF WEATHER WARM.
2. ROADWAY SWEEPING TO BE SET UP.
3. FERTILIZE GRASS IN LATE APRIL.
4. TREES ALSO SHOULD BE FERTILIZED.
5. REVIEW GROUND FOR ANY NEEDED REPAIRS AND CHANGES.
6. REVIEW BUILDINGS FOR NEEDED MAINTENANCE OR PAINT.

MAY:
1. LANDSCAPE REPAIRS OF WINTER KILL ON GRASS. WATCH FOR WEEDS (DANDELIONS) MAY NEED WEED CONTROLS.

JUNE:
1. WATCH FOR INSECTS ON TREES AND SHRUBS. IF EVIDENT SPRAY FOR CONTROLS.

JULY:
1. APPRAISAL FOR INSURANCE QUOTES.
2. FERTILIZE GRASS.

AUGUST:
1. REVIEW INSURANCE QUOTES. POLICY EXPIRES ON AUGUST 30 EACH YEAR.

SEPTEMBER:
1. MANAGEMENT CONTRACT RENEWAL NOTICE TO BE GIVEN 60 DAYS PRIOR TO NOVEMBER 30.
2. LANDSCAPE: NOTE: TIME TO PLANT AND PURCHASE TREES AND SHRUBS. PRICES LOW/FERTILIZE GRASS ONLY

OCTOBER:
1. BUDGET TO BE REVIEWED AND CONSIDERED FOR NEXT FISCAL YEAR, USE 9 MONTH FIGURES FOR PRELIMINARY.
2. LANDSCAPE : WATER IN TREES AND SHRUBS.

NOVEMBER:
1. BUDGET MUST BE APPROVED THIS MONTH.
2. LIST OF RECOMMENDATION TO NEW BOARD FROM YEARS WORK.

DECEMBER:
1. BUDGET MUST BE APPROVED THIS MONTH.
2. SET AGM DATE.

7.2 SAMPLE ANNUAL GENERAL MEETING CHECKLIST

FOR CONDOMINIUM CORPORATION NO. ____________________

DATE: ____

TIME: ____

LOCATION: ____

****

DETAIL	COMPLETE
Covering Letter	
Notice of Meeting	
Agenda	
Information Circular	
Proxy	
Minutes of Previous Meeting	
Audited Statements(if necessary)	
Owners Advised (Date)	
Mortgagees Advised	
Auditor/Lawyer Advised(if necessary)	
Location Confirmed	
EQUIPMENT	
Registration Table	
Head Table	
Chairs Ordered	
Head Table Mike	
Floor Mikes	
Overhead Projector	
Blackboard	
Coffee	
Chairman's Agenda Prepared	
Committee Reports	
Scrutineers Appointed	
Resolutions Prepared	
Approval of Minutes	
Approval of Auditor's Report(if necessary)	
Appointment of Auditors(if necessary)	

CHECKLIST CON'T

DETAIL COMPLETE NOTES

OTHER

Ballots

Election of Board of Managers
(Directors)

ID Cards

OTHER RESOLUTIONS

Scrutineers' Report Prepared

Affidavit of Service Prepared

Legal Counsel Invited

Auditor Invited

Requisition Forms Prepared

List of Receivables Prepared

RECORDING SECRETARY

OTHER CONSIDERATIONS:

(a) Mail Insurance Certificates and Financial Statements with Notice of Meeting
(b) In Agenda detail Special Business or proposed Resolutions
(c) Specific Insurance Resolutions (depending on By-Laws)
(d) List of owners in arrears over 30 days (By-Laws)
(e) Questions from floor only after all Agenda business completed
(f) Watch By-Law provisions re delivery of notices - timing
(g) Search Titles to all Units prior to mailing notices
(h) Door Prize to encourage attendance
(i) Disclose plans for future common property additions or improvements
(j) Diffuse anticipated problem areas by disclosure
(k) Replacement Value Appraisal - Distribution
(l) Resolution re By-Laws amendments - updating
(m) Capital Additions and Contingency Reserve Fund
(n) Written Board Member Resignations
(o) COMMUNICATE

HAWAIIAN ESTATES
NOTICE OF GENERAL MEETING
THE ANNUAL GENERAL MEETING OF THE OWNERS:
CONDOMINIUM PLAN 872 0000 WILL TAKE PLACE
AS FOLLOW

DATE - SEPTEMBER 30, 1987
DAY - Thursday
PLACE- BELMONT SCHOOL
ANYWHERE, ALBERTA
TIME - 7:00 P.M.

AGENDA -
- A. CALL TO ORDER BY THE CHAIRMAN
- B. CALL ROLL AND CERTIFY PROXIES
- C. PROOF OF NOTICE OF MEETING
- D. READING AND APPROVAL OF MINUTES
- E. REPORT BY EXECUTIVES
- F. RATIFICATION OF PAST ACTS OF THE BOARD
- G. RESIGNATION OF BOARD OF DIRECTORS
- H. ELECTION OF NEW BOARD OF DIRECTORS
- I. UNFINISHED BUSINESS
- J. NEW BUSINESS
- K. QUESTION AND ANSWER PERIOD
- L. ADJOURNMENT

PROXY

WHEREAS ______________________________ UNIT ____________

ADDRESS ____

HAVING BEEN GRANTED PROXY BY THE MORTGAGE HOLDER UPON THE PURCHASE OF THE ABOVE PROPERTY, IS DESIROUS OF GRANTING A PROXY TO: ____ AS THEIR REPRESENTATIVE

AT A GENERAL MEETING OF THE OWNERS: CONDOMINIUM 872 0000 TO

BE HELD AT BELMONT SCHOOL EDMONTON, ALBERTA, ON SEPTEMBER 30, 1987 AT 7:00 P.M.

THE SIGNING OF THIS PROXY ALSO WAIVES THE 14 DAYS NOTICE AS

REQUIRED BY THE BY-LAWS OF THE CORPORATION.

DATED ______________ REGISTERED OWNER ____________________

WITNESS ____________________

7.3 STATUTORY DECLARATION

CANADA
Province of Alberta
To Wit:

I, {FNAME} {LNAME} /and
of the {C/T} of {CITY} in the Province of {PROV},

DO SOLEMNLY DECLARE, that;

1. I am/we are the owner/s of Unit {UNIT}, Plan {PLAN}, municipally known as {MUNI ADDRESS}, Edmonton, Alberta.
2. We do not intend to live in the said unit and rent it out commencing some time during the month of ________.
3. Such leasing will continue pursuant to a written lease agreement until further notice.
4. Any notices required to be served upon us as owners of the said unit may be served upon us at:
   Address:
   Phone:
5. The rent proposed to be charged for the said unit is $ ______.___ Dollars per month.
6. The new tenants who will occupy the above mentioned unit have received and read and understand the by-laws of the Condominium Corporation, and agree to abide by the by-laws.
7. The name of the tenants residing in the unit are;
   NAME -

   ADDRESS - POSTAL CODE

   TELEPHONE -

   PETS -

AND I make the solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act".

Declared before me at the City

of ________________ ________________
OWNER

in the Province of Alberta, this ________________
CO-OWNER

_____ day of____________ , A.D. 1987.

____
COMMISSONER FOR OATHS

THIS DOCUMENT TO BE SWORN BEFORE A COMMISSIONER FOR OATHS.

7.4

AGREEMENT AND UNDERTAKING
BY TENANT

Re : {MUNI ADDRESS}

To : {CONDO}, Owners Condominium Plan
{PLAN}

We the tenants in Unit {UNIT} hereby acknowledge that we have received a copy of the amended Condominium By-laws of the {CONDO} Condominium Corporation and undertake and agree to be bound by all the terms and conditions thereof as though we were the owners and members of the {CONDO} Condominium Corporation and that this Agreement and Undertaking shall be binding upon us during the entire term of our tenancy.

SIGNED this ________ day of __________________ A.D. 1987.

IN THE PRESENCE OF:

____________________	____________________
WITNESS	TENANT
____________________	____________________
WITNESS	TENANT

Original - return to office
Copy 2 - owner copy
Copy 3 - renter copy

7.5

MINUTES OF MEETING:

MEETING NUMBER ____________

PAGE 1 of ____________

THOSE PRESENT:

THOSE ABSENT:

MEETING DATE ____________

TIME: ____________

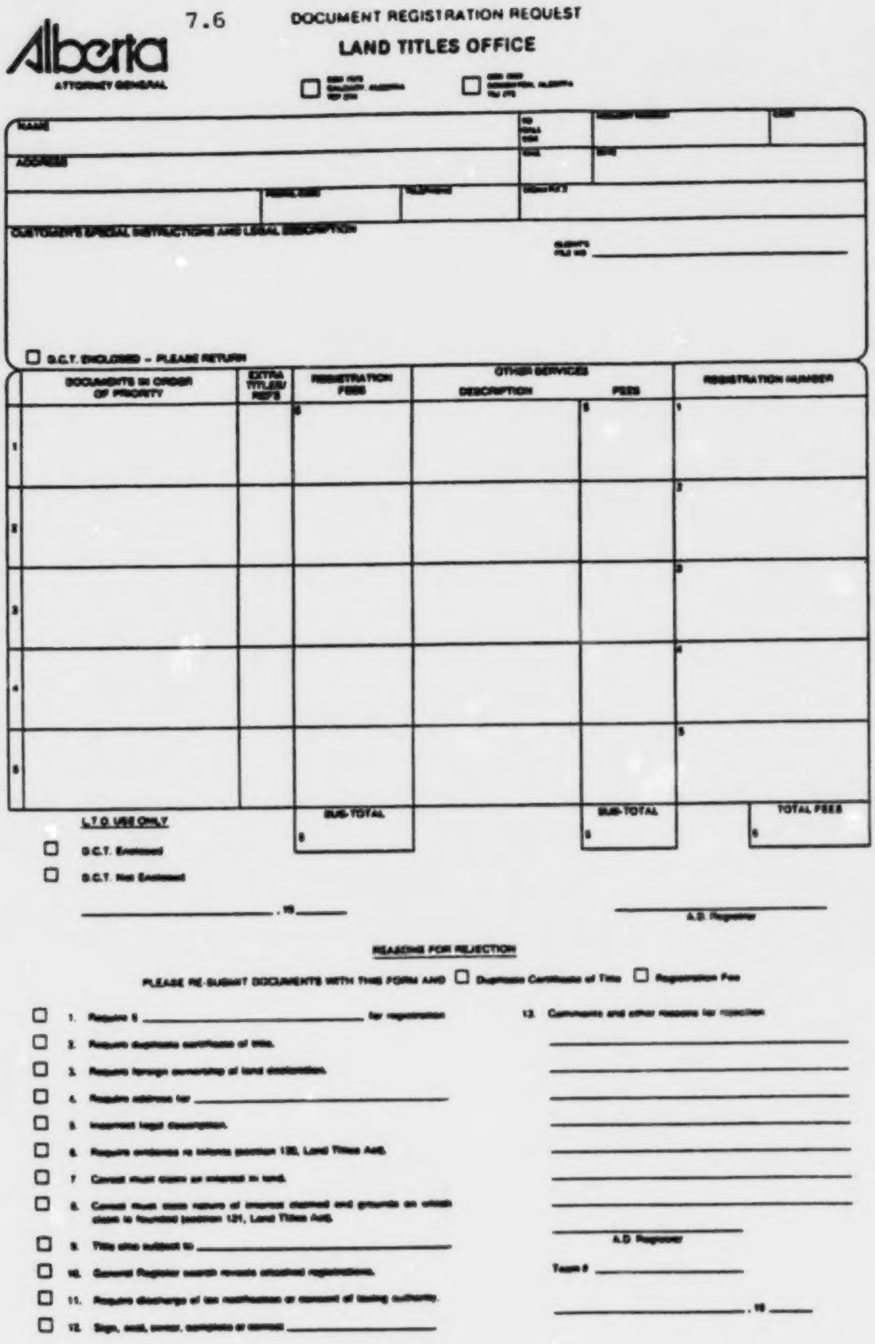
LOCATION ____________

RECORDED BY:

ITEM NO	DESCRIPTION OF DISCUSSION	ACTION TAKEN - DATE OF MOTION CARRIED (IF ANY)

ITEM NO	DESCRIPTION OF DISCUSSION	Page ____ of ____ ACTION TAKEN (IF ANY)

7.6



Alberta
ATTORNEY GENERAL

DOCUMENT REGISTRATION REQUEST

LAND TITLES OFFICE

☐ ☐

NAME

ADDRESS

CUSTOMER'S SPECIAL INSTRUCTIONS AND LEGAL DESCRIPTION

CLIENT'S FILE NO. ____________

☐ D.C.T. ENCLOSED – PLEASE RETURN

	DOCUMENTS IN ORDER OF PRIORITY	EXTRA TITLES/ REF'S	REGISTRATION FEES	OTHER SERVICES DESCRIPTION	OTHER SERVICES FEES	REGISTRATION NUMBER
1			$		$	1
2						2
3						3
4						4
5						5
			SUB-TOTAL $		SUB-TOTAL $	TOTAL FEES $

L.T.O. USE ONLY

☐ D.C.T. Enclosed

☐ D.C.T. Not Enclosed

____________, 19____

____
A.D. Registrar

REASONS FOR REJECTION

PLEASE RE-SUBMIT DOCUMENTS WITH THIS FORM AND ☐ Duplicate Certificate of Title ☐ Registration Fee

☐ 1. Require $ ____________ for registration
☐ 2. Require duplicate certificate of title.
☐ 3. Require foreign ownership of land declaration.
☐ 4. Require address for ____________
☐ 5. Incorrect legal description.
☐ 6. Require evidence re infants (section 1[illegible], Land Titles Act).
☐ 7. Caveat must claim an interest in land.
☐ 8. Caveat must state nature of interest claimed and grounds on which claim is founded (section 131, Land Titles Act).
☐ 9. Title also subject to ____________
☐ 10. General Register search reveals unsatisfied registrations.
☐ 11. Require discharge of tax notification or consent of taxing authority.
☐ 12. Sign, seal, swear, complete or correct ____________

13. Comments and other reasons for rejection

____
A.D. Registrar

Team # ____________

____________, 19____

A.G. 1844(Rev. Nov/84)

REGISTER

825385

AVAILABLE FREE OF CHARGE AT LAND TITLES

Alberta
ATTORNEY GENERAL
Land Titles office

7.7

NOTICE OF CHANGE OF MEMBERS OF THE BOARD

(Section 23 of the Condominium Property Act)

The Owners: Condominium Plan No. .... hereby give notice that on the .... day of .... , 19 ...... the following persons were appointed members of the Board of Owners: Condominium Plan No. ....

NAME **ADDRESS**

Notice is also given that on the .... day of ...., 19 ...... the following persons ceased to hold office as members of the Board:

NAME **ADDRESS**

The members of the Board are as of this date:

NAME **ADDRESS**

Dated this .... day of .... , 19 ......

The Seal of the Owners: Condominium Plan No. .... was hereto affixed on .... in the presence of

....
(Members of the Board)

....
(Members of the Board)

AG 1880 (May 85)

7.8

Alberta
ATTORNEY GENERAL
Land Titles office

NOTICE OF CHANGE OF ADDRESS FOR SERVICE

(Section 65 of the Condominium Property Act)

The Owners: Condominium Plan No. .... hereby give notice that by a resolution of the Board dated .... it has designated ....
....
....
....
as the address at which documents may be served on the corporation.

Dated this .... day of ...., 19 ......

The seal of The Owners: Condominium Plan No. ....
was hereunto affixed on ....
in the presence of

....
(Members of the Board)

....
(Members of the Board)

AG 1879 (May 85)

(

FORM 3

7.9

NOTICE OF CHANGE OF BY-LAWS

(THE CONDOMINIUM PROPERTY ACT, s. 18(4))

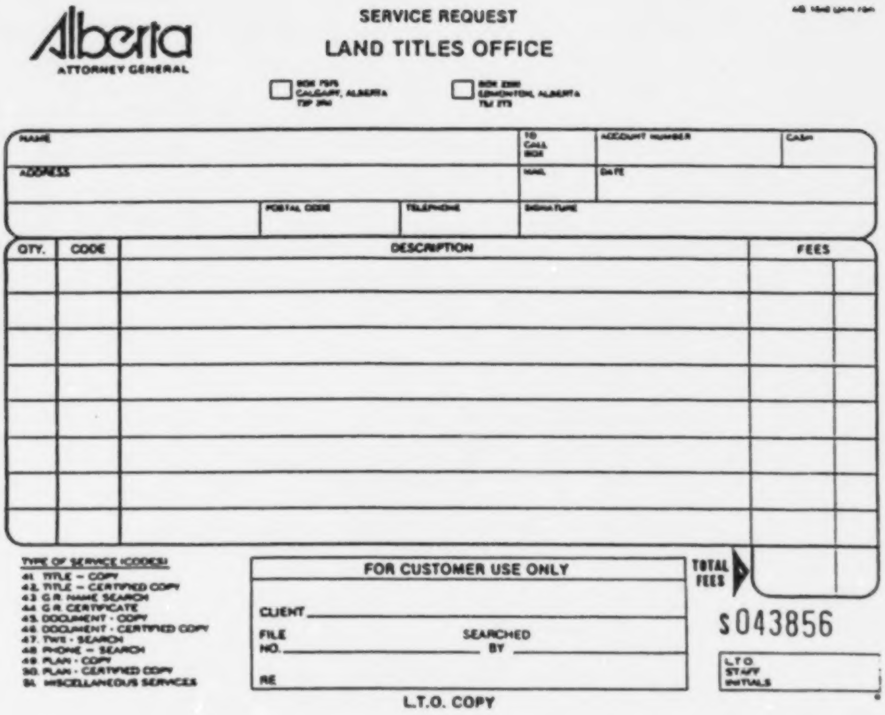
The Owners: Condominium Plan No. hereby certifies that by a special resolution passed on the by-laws applicable to the building referred to in the aforesaid condominium plan were repealed and replaced with the attached condominium by-laws which have been prepared and adopted pursuant to The Condominium Property Act being chapter C22 of the Revised Statutes of Alberta 1983 with amendments up to and including

The seal of the Owners: Condominium Plan No. was hereunto affixed on in the presence of

____

____

7.10



Alberta
ATTORNEY GENERAL

SERVICE REQUEST
LAND TITLES OFFICE

☐ CALGARY, ALBERTA

☐ EDMONTON, ALBERTA

NAME		TO CALL BOX	ACCOUNT NUMBER	CASH
ADDRESS		MAIL	DATE	
	POSTAL CODE	TELEPHONE	SIGNATURE	

QTY.	CODE	DESCRIPTION	FEES	
		TOTAL FEES		

TYPE OF SERVICE (CODES)
41. TITLE – COPY
42. TITLE – CERTIFIED COPY
43. G.R. NAME SEARCH
44. G.R. CERTIFICATE
45. DOCUMENT - COPY
46. DOCUMENT - CERTIFIED COPY
47. TWII - SEARCH
48. PHONE – SEARCH
49. PLAN - COPY
50. PLAN - CERTIFIED COPY
51. MISCELLANEOUS SERVICES

FOR CUSTOMER USE ONLY

CLIENT ____________________

FILE NO. ____________ SEARCHED BY ____________

RE

L.T.O. COPY

S043856

L.T.O. STAFF INITIALS

AVAILABLE FREE OF CHARGE AT LAND TITLES

7.11

CAVEAT

TO THE REGISTRAR OF THE NORTHERN ALBERTA LAND REGISTRATION DISTRICT

TAKE NOTICE THAT WE, THE OWNERS CONDOMINIUM PLAN NO.
CLAIM AN INTEREST UNDER AND BY VIRTUE OF A CHARGE ON THE SAID LANDS PURSUANT TO THE PROVISIONS OF SUB SECTION (3), (4), AND (6) OF SECTION 31 OF THE CONDOMINIUM PROPERTY ACT , R.S.A. 1980, BEING CHAPTER C22, AS AMENDED, AND INTEREST PAYABLE THEREON, RELATING TO THE AMOUNT OF CONTRIBUTIONS LEVIED BY THE CAVEATOR BUT UNPAID, THE MAXIMUM AMOUNT OF CONDOMINIUM FEES AND INTEREST DUE IS NOT KNOWN OR ASCERTAINABLE.

THE UNPAID ASSESSMENTS AT THE PRESENT DATE ARE $
PLUS FURTHER INDEBTEDNESS AS IT ACCRUES

IN:
UNIT NO. THE OWNERS CONDOMINIUM PLAN NO.
AND UNDIVIDED ONE TEN THOUSANDTH SHARES OF THE COMMON PROPERTY THEREIN IN THE CITY OF EDMONTON, IN THE PROVINCE OF ALBERTA, CANADA, EXCEPTING THEREOUT ALL MINES AND MINERALS

BEING LANDS DESCRIBED IN CERTIFICATE OF TITLE NUMBER STANDING IN THE REGISTER IN THE NAME OF
AND I FORBID THE REGISTRATION OF ANY PERSON AS TRANSFEREE OR OWNER OF OR OF ANY INSTRUMENT AFFECTING THE SAID ESTATE OR INTEREST, UNLESS THE INSTRUMENT OR CERTIFICATE OF TITLE AS THE CASE MAY BE IS EXPRESSED TO BE SUBJECT TO MY CLAIM.

I APPOINT AT EDMONTON, IN THE PROVINCE OF ALBERTA, AS THE PLACE AT WHICH NOTICE OF PROCEEDINGS RELATING HERETO MAY BE SERVED.

DATED THIS DAY OF A.D. 19

THE OWNERS CONDOMINIUM PLAN NO.
BY OUR AGENTS

PER ______________________________

CANADA) I,
)
PROVINCE OF) OF THE CITY OF EDMONTON, MANAGER
ALBERTA)
)
TO WIT) IN THE PROVINCE OF ALBERTA
)
) MAKE OATH AND SAY

1. THAT I AM AGENT FOR THE ABOVE-NAMED CAVEATOR

2. THAT I BELIEVE THAT THE SAID CAVEATOR HAS A GOOD AND VALID CLAIM UPON THE SAID LANDS AND I SAY THAT THIS CAVEAT IS NOT BEING FILED FOR THE PURPOSE OF DELAYING OR EMBARRASSING ANY PERSON INTERESTED THEREIN OR PROPOSING TO DEAL THEREWITH.

SWORN BEFORE ME AT THE CITY)
)
OF EDMONTON, IN THE PROVINCE)
)
OF ALBERTA THIS DAY)
)
OF A.D. 19) ______________________________

____

Form No. 222

Mayan Stationery Ltd.

7.12

DISCHARGE OF CAVEAT

CANADA
PROVINCE OF ALBERTA

TO THE REGISTRAR OF THE ALBERTA LAND REGISTRATION DISTRICT

I, (WE)

of the

in the Province of Alberta

the acknowledge that I (we) have (it has) no further

interest under the caveat made by

in

Here give description of property.

which caveat bears date the day of A.D. 19 and was Registered in the

LAND TITLES OFFICE for the said Alberta Land Registration District at o'clock m.,

on the day of A.D. 19 , as number

and that such Caveat is hereby withdrawn and discharged.

IN WITNESS WHEREOF I (WE) have hereunto subscribed my (our) name(s) (the Company has hereunto affixed its Corporate Seal by the hands of its proper officers) this day

of A.D. 19

SIGNED by the above named)

in the presence of)

DATED A.D. 19

Discharge of Caveat

AFFIDAVIT OF EXECUTION

CANADA) I,
PROVINCE OF ALBERTA)
TO WIT) of
in the Province of Alberta,
(Occupation)

MAKE OATH AND SAY:

1. THAT I was personally present and did see

named in the within instrument, who is (are) personally known to me to be the person(s) named therein, duly sign and execute the same for the purposes named therein.

2. THAT the same was executed at
in the Province of Alberta, and that I am the subscribing witness thereto.

3. THAT I know the said person(s) and he (she, each) is, in my belief, of the full age of eighteen years.

SWORN before me at)
in the Province of Alberta,)
this day of , A.D.)
)
)
)

A Commissioner for Oaths

Form 405 (After Judgment)

MAYANS LIMITED

7.13 AFFIDAVIT IN SUPPORT OF GARNISHEE SUMMONS

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF

BETWEEN:

of **Judgment Creditor**

and

of **Judgment Debtor**

and

Garnishee

I,
of the of
in the Province of Alberta MAKE OATH AND SAY AS FOLLOWS

1. I AM the Judgment Creditor herein and as such have (except where stated to be your information and belief) a personal knowledge of the matters hereinafter deposed to.

2. THE JUDGMENT DEBTOR is justly and truly indebted to the Judgment Creditor in the sum of $
for

State nature and amount of judgment

3. TO THE BEST of my information and belief,
the proposed garnishee is indebted to the said Judgment Debtor, (or the monies are accruing due from the proposed garnishee to the Judgment Debtor) and the proposed garnishee is within Alberta.

This paragraph need not be entered unless the Garnishee has more than one office or place of business

4. THE PLACE at which, or office through which, such indebtedness is alleged to be payable is:

5. THE ALLEGED debt sought to be attached is for wages or salary earned by the Judgment Debtor who resides at
and was employed by the Garnishee as
at the time the alleged debt was incurred.

6. THE DEBT sued for was not contracted for board and lodging, or either of them.

7. THE PARTICULARS given by me in paragraphs 4 and 5 hereof are such as are within my knowledge. Any particulars called for by such paragraphs and not given therein I have been unable after reasonable enquiry to ascertain.

SWORN before me at the)
of)
in the Province of Alberta)
this day of) ....
A.D. 19)

....
A Commissioner for Oaths in and for the Province of Alberta

No. .... A.D. 19

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF

BETWEEN:

Judgment Creditor

and

Judgment Debtor

and

Garnishee

Affidavit in Support of Garnishee Summons

416 983 [illegible]

7.14 GARNISHEE SUMMONS

Garnishee After Judgment
Rule 470 – Form L

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF

BETWEEN:

of **Judgment Creditor,**

and

of **Judgment Debtor,**

and

of **Garnishee.**

TO THE ABOVE NAMED GARNISHEE:

YOU ARE HEREBY NOTIFIED that the Judgment Creditor has recovered a judgment in this Court against the Judgment Debtor for $ inclusive of costs of which $ remains payable. There are also subsisting writs of execution against the Judgment Debtor in the sum of $ as shown by the Sheriff's certificate filed herein.

IT IS ALLEGED on affidavit filed that you are indebted to the Judgment Debtor.

YOU ARE HEREBY NOTIFIED that within ten days from the service of this Garnishee Summons upon you, YOU ARE REQUIRED either:

(a) to pay into Court the lesser of

(i) the money due from you to the Judgement Debtor on the day of service of this Garnishee Summons;

or

(ii) such portion of it as is sufficient to satisfy the claim, the probable costs of the Judgment Creditor and the amount of the subsisting writs, being in all the sum of $

or

(b) file answer in duplicate in the office of the Clerk of this Court disputing liability to the Judgment Debtor or claiming the debt is or may not be attachable and stating the grounds upon which such answer is based.

or

(c) file answer in duplicate in the office of the Clerk stating that the money is accruing due, but is not yet payable, and that it is to be payable at a future date or upon the happening of a specified event. Upon the specified future date or upon the happening of the specified future event you are thereupon required (in addition to filing answer within ten days) to pay into court as in paragraph (a)

or

(d) file answer in duplicate in the office of the Clerk stating that the debt attached belongs or may belong to some Third Party whose name and address you must state so far as is known to you. You are also required, unless the Court otherwise orders, to pay into Court as in paragraph (a) as if the debt was payable to the Judgment Debtor.

IF THE MONEY DUE FROM YOU TO THE JUDGMENT DEBTOR IS FOR WAGES OR SALARY you are also required

(a) to file with the Clerk at the same time a statement showing the period with respect to which such wages or salary is due and particulars of any payments made on account thereof and any deduction claimed therefrom;

(b) to deduct from the amount paid into Court the exemption applicable under Rule 483 which is endorsed hereon.

ISSUED AT this day of , A.D. 19

Clerk of the Court

ENDORSEMENT

Pursuant to Rule 470(4)

TO THE WITHIN NAMED GARNISHEE:–

TAKE NOTICE that it is alleged on affidavit in this Honourable Court, filed in support of this Garnishee, that

(1) The place at which or office through which such indebtedness is payable by you is

(2) The Debt sought to be attached is for wages or salary.

(3) The residence of the Judgment Debtor is

(4) The occupation of the Judgment Debtor while in your service at the time your indebtedness to him was incurred was

(5) The judgment recovered herein was not contracted for board and lodging, or either of them.

DATED at this

.... day of .... A.D., 19.........

....

Clerk of the Court

EXEMPTION

Rule 483

(1) Where the debt due to an employee is for wages or salary the following portion thereof is exempt from attachment by garnishee for each month in respect of which the wages or salary is payable:

(a) if the debtor is a married person, the sum of $700, or

(b) if the debtor is a married person with dependent children
  (i) in his or her custody, or
  (ii) under his or her control, or
  (iii) in respect of whom he or she is paying maintenance

$700 plus $140 for each child, or

(c) if the debtor is a widow, widower, unmarried mother or divorced person with dependent children
  (i) in his or her custody, or
  (ii) under his or her control, or
  (iii) in respect of whom he or she is paying maintenance

$525 plus $140 for each child, or

(d) if the debtor is an unmarried person $525

(2) The amount of exemption applicable is increased or decreased proportionately where the period in respect of which the wages or salary is payable is greater or less than one month.

(3) If the debtor is employed during part only of a month, he is entitled to the full exemption for the month.

(4) If the amount of the exemption applicable or any portion thereof is paid into court, the clerk shall pay it out to the defendant or judgment debtor.

(5) This Rule does not apply

(a) where the debt sued for, or in respect of which judgment was recovered, was contracted for board and lodging or either of them, or

(b) where the debtor has absconded or is about to abscond from Alberta, leaving no wife or husband or infant children within Alberta, or

(c) to any garnishee summons issued upon any judgment or order for the payment of alimony or for the payment of maintenance by a husband to his wife or his former wife, as the case may be, or for the payment of maintenance for any child of the debtor.

(6) A copy of this Rule shall be attached to or endorsed on each garnishee summons purporting to attach wages or salary.

No. .... A.D. 19

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF

BETWEEN

Judgment Creditor

and

Judgment Debtor

and

Garnishee

Garnishee Summons

Issued by

7.15

IN THE PROVINCIAL COURT OF ALBERTA

SMALL CLAIMS DIVISION

BETWEEN: DOCKET NO. ____________

____________________ AND ____________________

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR SUBSTITUTIONAL SERVICE

I, ____________________ (~~Plaintiff~~/Agent of the Plaintiff)

of ____,

MAKE OATH AND SAY THAT:

1. I am the Plaintiff/Agent of the Plaintiff herein and have tried on ______ occasions to serve the Summons upon the Defendant(s) by personal service/certified mail/double registered mail, without success.

SWORN BEFORE ME this __________)
day of ______________, 19____)
at ________________, Alberta.)

____________________________) ____________________
Commissioner for Oaths in the Province)
of Alberta)

____________________________)
Print Name and Expiry Date)

IN THE PROVINCIAL COURT OF ALBERTA

SMALL CLAIMS DIVISION

DOCKET NO. ____________

BETWEEN:

______________________________ and ______________________________

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A FIAT

I, ____________________________ (Plaintiff/Agent of the Plaintiff)

of ____,

MAKE OATH AND SAY THAT:

1. I am the Plaintiff/Agent of the Plaintiff herein and truly believe I have a reasonable cause of action.
2. I am making an application for a Fiat for the following reason(s):

____

____

____

____

____.

SWORN BEFORE ME THIS ____________)
day of ________________, 19 ____)
at ______________________, Alberta.)

______________________________) ______________________
Commissioner for Oaths in the) Signature of Deponent
Province of Alberta)

______________________________)
Print Name and Expiry Date)

7.16

SMALL CLAIMS DIVISION
PROVINCIAL COURT OF ALBERTA

DOCKET NUMBER______________

BETWEEN
THE OWNERS CONDOMINIUM PLAN #

AND

NOTICE OF WITHDRAWL

TO THE ABOVE NAMED____

TAKE NOTICE THAT - THE OWNERS CONDOMINIUM PLAN

HAS WITHDRAWN THE CLAIM AGAINT THE DEFENDANT.

DEFENDANT HAS NOT BEEN SERVED WITH SUMMONS.

DATED AT THE CITY OF EDMONTON THIS DAY OF A.D. 198

____
AGENT FOR THE OWNERS
CONDOMINIUM PLAN
#

IN THE SMALL CLAIMS DIVISION OF THE PROVINCIAL COURT OF ALBERTA

C 20
R S A
1980
Sec 36

DOCKET No ______

7.17 BETWEEN:

Plaintiff(s)

and

Defendant(s)

SUMMONS

THE PLAINTIFF(S) CLAIM(S) from the Defendant(s) the sum of $ ______ and costs of this action. The claim arose at ______ Alberta on or about the ______ day of ______ ______ 19 ______ The facts upon which the Plaintiff's case is based are

(Particulars of Claim)

The Plaintiff(s) address for service is ______ Street Address ______ City ______ Province
______ Postal Code ______ Res. Phone ______ Bus. Phone

The Defendant(s) address is ______ Street Address ______ City ______ Province
______ Postal Code ______ Res. Phone ______ Bus. Phone

The Defendant(s) address is ______ Street Address ______ City ______ Province
______ Postal Code ______ Res. Phone ______ Bus. Phone

Dated this ______ day of ______ 19 ______ at ______ Alberta

______ Signature of Plaintiff / Agent / Solicitor ______ Name in Print

NOTICE TO DEFENDANT

Take notice that this matter has been set down before a Judge of the Provincial Court at ______

on the ______ day of ______ 19 ______ at ______ o'clock in the ______ noon

IF YOU DISPUTE the Plaintiff's claim, you are required to appear on the above date

☐ for hearing of the claim. If you do not appear, the Court may hear the matter and enter Judgment in your absence

☐ to arrange for a hearing. If you do not appear, the Court may hear the matter and enter Judgment in your absence

ISSUED OUT OF THE PROVINCIAL COURT OF ALBERTA

AT ______ THIS ______ day of ______ 19 ______

______ Clerk of the Provincial Court

AG 1461 (Rev Mar 88)

COURT COPY

7.18

ESTOPPEL CERTIFICATE

TO ______________________________ FILE ______________
____
____
____

The Owners: Condominium Plan Number ______________

HEREBY CERTIFIES AS FOLLOWS REGARDING:

UNIT N° ________ AS OF ____________________ 19____
MUNICIPALLY KNOWN AS ____________________
____

ASSESSMENTS 1(a). The condominium fee assessment is $ ______________ payable in advance on the first day of every year. To relieve the financial burden, the Board of Directors will accept monthly post-dated cheques covering the above amount. Condominium fees for the above unit at the above date are:

(i) ☐ current to the month of ______________.
(ii) ☐ in arrears ________ months for $ ____________.

1(b). The above noted unit is also indebted to The Owners: Condominium Plan ____________ in the amount of $ ____________ for the following:
____
____
____

INSURANCE 2. The Corporation has current replacement insurance on the units and common property in the amount of $ __________________.

ACTIONS 3. The Corporation has not received any notice of any action or claim against the Common Property, nor does it contemplate any legal actions.

TERMINATION / ADMINISTRATION 4. There are no outstanding notices respecting termination of the Condominium or the appointment of an administrator.

DISPOSITION OF COMMON PROPERTY 5. There has been no lease or transfer of any of the Common Property.

GENERAL MEETING 6. There are no outstanding notices with respect to General Meetings or Extra-ordinary General Meetings.

(OR)

The next scheduled General Meeting is at ________ o'clock on ____________, 19____
at ______________________________

RESERVES 7. The Corporation has a balance of $ ______________ in the Reserve Fund.

DIRECTORS 8. The members of the Board of Directors of the Corporation are:
____
____
____
____
____
____
____

Dated at the city of EDMONTON, this __________ day of ______________ A.D. 19______

The Owners: Condominium Plan Number ______________
per: ______________________________ (Agent)

7.19 **EDMONTON PARKING PATROL LTD.**
10178 - 111 STREET, EDMONTON, ALBERTA T5K 1K6
PHONE: 420-6081

PARKING PATROL AGREEMENT AND CONTRACT

THIS AGREEMENT made this ______ day of ______________ 19___
between **EDMONTON PARKING PATROL LTD.** , hereinafter referred to as
PATROLLER AND THE OWNERS: CONDOMINIUM PLAN #______________
also operating under the name of ______________________
herein referred to as **THE CORPORATION.**

IN CONSIDERATION promises, covenants and conditions herein contained, both parties do hereby mutually agree as follows:

1. **PATROLLER** agrees that with **ABSOLUTELY NO CHARGE OF ANY KIND TO THE CORPORATION**, will patrol the parking on the premises described as, ____

2. **THE CORPORATION INSTRUCTS THE PATROLLER** to place tags on unauthorized vehicles parked on said premises, and to collect for such tags.

3. **PATROLLER AND THE CORPORATION** agree that unauthorized vehicles shall be all vehicles that, ______________________________________
____

4. **PATROLLER** agrees to provide one or more of the following services:
   a) Patrol on a regular basis each day ______________
   b) Posted patrolman on premises during ______________
   c) Phone in service to request patrolman as required ________
   d) Towing of unauthorized vehicles according to __________

   e) Other ______________________________________
   ____

5. **PATROLLER** will supply and install standard private property signs as required at no cost to the **THE CORPORATION.** Signs are and remain the property of **PATROLLER.**

6. **PATROLLER** will arrange for and install any special signs required by the **THE CORPORATION** and **THE CORPORATION** agrees to pay **PATROLLER** for such. These signs to be and remain the property of **THE CORPORATION.** Special signs required:
   ____
   ____

7. **PATROLLER** will supply and distribute parking passes as required at no cost to **THE CORPORATION.**

8. **PATROLLER** will hold **THE CORPORATION** harmless in the event of any claim arising from the patrol operation.

9. **PATROLLER** will promptly void any tags inadvertantly issued to authorized parkers at no charge or delay.

10. **TERM** of this agreement to be one year unless terminated for cause.

______________________________ ______________________________
THE OWNERS: CONDOMINIUM PLAN________ REPRESENTATIVE OF EDMONTON PARKING
(________________) PATROL LTD.
seal

____
AUTHORIZED REPRESENTATIVE OF BOARD OF MANAGERS

PHONE NUMBER ______________________

seal

8.0 TENANTS IN CONDOMINIUMS

8.0 TENANTS IN CONDOMINIUMS

8.1 THE DIRECTOR'S PERSPECTIVE

Tenants in condominiums. This is one of those issues in condominiums that usually leads to high emotions. In some condominiums, it has lead to a complete breakdown of property values and a deterioration of the quality of life of the owners residing in the condominium. It is indeed a painful issue that affects several unrelated parties. These parties include the tenant himself, the condominium board of directors, the property manager, the other owners in the corporation and the owner involved in leasing the unit. In this discussion paper I hope to take a look at the interests of each of these parties, their interactive relationship, and how a condominium board of directors can walk the minefield of this issue while protecting their own specific interests. Let's examine the parties involved:

8.2 THE TENANT

In most cases the tenant has never been involved with a condominium before. Most do not know the workings of the Landlord Tenant Act, let alone the Condominium Act. As a tenant all he understands is that he rents the unit and once he pays his rental cheque that is it. He has no financial interest in the upkeep of his rented unit. He has little interest in the value of the property he is using in or out of the unit, mainly due to the fact that he does not (and in most cases never has) owned any property.

8.3 THE PROPERTY MANAGER

The property manager, on this issue, is caught between a rock and a hard place. Not only must he manage a condominium as a condominium, he must also understand the Landlord/Tenant relationship that exists within his condominium. No easy task. The tenant's lack of respect for property can lead to abuse and neglect of the common elements of the condominium. As such this creates more work for a manager not really out looking for more work. Tenants in sufficent numbers can create enormous damage and high maintenance costs for the manager to cope with.

8.4 THE OTHER OWNERS

Tenants take on a special place in the eyes and minds of their neighbouring condominium owners. They are seen by the owners as "outsiders" to the corporation and really only "temporary" fixtures. This "cold shoulder" approach given by owners to their next door neighbour tenant, invariably leads to a greater lack of respect by the tenant for the corporation he is living in. As the tenant become reinforced in this mode of thinking, he openly pays little interest in the property maintenance of his unit. This in turn fuels the lack of respect that the other owners have for the tenant. It is quite a vicious cycle.

8.5 THE OWNER LEASING THE UNIT

Many owners see the owner leasing his unit as the real culprit. Many boards have tried to develop complex plans to make it very difficult for the owner to rent his unit. Morally though, the owner, as part of his legal property rights, should have the right to rent out his unit.

In most cases he is renting out the unit as a last resort. Usually he only rents when he cannot sell his unit at a preceived reasonable price. The only exception to this situation is the owner who intentionally purchases his unit as an investment, and turns around immediately and rents it out. Usually the owner renting out his unit feels he is the victim that finds himself in the terrible position of attempting to balance the interest of his tenant and the condominium corporation.

8.6 SO WHAT CAN A BOARD DO?

Good question. Dealing effectively with tenants in a condominium requires patience, tack and a lot of diplomacy. Here are some measures a board of directors can take:

Identification - The first thing that a board of directors must do is to identify the units in their development that are resided by tenants. Dealing effectively with tenants in a condominium requires knowing where they are.

Owners are obligated by law to provide the condominium with their mailing address. When the administration of a condominium sees an owner requesting that his mailing address be changed to an address outside of the project; the property manager should be directed by the board to contact the owner. The property manager should ascertain whether or not the owner has rented out his unit. If he has done so, the property manager should suggest to the owner that he should enter into a lease with his tenant that contains a clause whereby the tenant agrees to abide by the declaration, by-laws, rules and regulations of the condominium. It should be made perfectly clear that to do this is in the very best interest of the owner who is renting out his unit.
This is the case because the tenant is legally the "guest" of the owner. As such the owner is personally and directly finanically responsible for the actions of his "guest" in the condominium.

Direct Contact With the Tenant - Nothing but nothing beats the personal touch. Once identified, the board should have the property manager make direct personal contact with the new incoming tenant. The tenant should be made to feel welcome in his new home. The property manager should give him a copy of the declaration, by-laws, rules and regulations of the corporation. These rules should be reviewed verbally in summary form so the tenant may have a direct first hand grasp of what the condominium expects of his conduct. Ignorance is the real main issue behind the vast majority of problems created by tenants living in condominiums. Some corporations have even set up special "liason" tenant committees manned by tenants to voice the concerns of the tenants in the project to the condominium board of directors.

Tenants should be freely invited to attend Annual General Meeting. By their attendance they will be able to see that everyone is really after what they want, to live a pleasant and comfortable life style.

How to Stop Trouble Makers - Sometimes, no matter what reasonable efforts are put forward by a board of directors, there is a tenant that becomes a clear and persistent problem. This problem is usually accompanied by an apathic owner who refuses to discipline his tenant's conduct. When from time to time a board of directors is faced with this situation, they must act quickly and harshly. No mercy.

The board should clearly instruct the property manager to compile a carefully and well documented history of the conduct of the tenant. All costs of mainteneous repairs attributed to the conduct of the tenant should be detailed and totalled. The board should then contact the corporation's solicitors and have them send a warning letter to both the tenant and his landlord owner. If the tenant continues to cause problems, the board of directors should then instruct their legal counsel to proceed with legal action to collect the damages suffered by the condominium as a result of the conduct of the tenant. I understand that some condominium corporations have even gone so far as to issue liens on the property title of the unit involved to collect their sought damages. While I feel this is not necessary, the board should definitely look at every legal course of action available. One tactic that can also be effective, is to publish a history of the conduct of the tenant in the newsletter of the condominium. Doing this will keep the other owners in the condominium informed and will encourage them to keep an eye open as to the activities of the tenant. A well timed observation can lead to the involvement of the police with charges for damage to the condominium's property. Luckily, taking these extreme actions are usually a rarity. If they are not, then the board's problems are bigger than just the conduct of their tenants.

So, to conclude, patience is the most important factor in effectively dealing with tenants. Tenants are human beings too and deserve respect. They just want to live in a comfortable home environment like everybody else. Getting their involvement is the key issue.

If the relationship between the new incoming tenant and the condominium corporation is made clear right from the beginning, most of the real issues will simply not appear.

8.7 THE CONDOMINIUM PROPERTY ACT OF ALBERTA

RENTAL OF RESIDENTIAL UNITS

SECTION 44

44(1)An owner of a residental unit shall not rent his unit until he has given written notice to the corporation of his intention to rent the unit, setting forth

(a) the address at which he may be served with a notice given by the corporation under section 45 or an originating notice or order referred to in section 46 or 47, and

(b) the amount of rent to be charged for the unit.

(2)If an owner of a residential unit rents his unit it is a condition of that tenancy, notwithstanding anything in the tenancy agreement, that the persons residing in or on that unit shall not

(a) cause damage to the real or personal property of the corporation or the common property , or

(b) contravene the by-laws.

(3)The corporation may require an owner who rents his residential unit to pay to and maintain with the corporation a deposit that the corporation may use for

(a) the repair or replacement of the real and personal property of the corporation or of the common property, or

(b) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 41, that is damaged, destroyed, lost or removed, as the case may be, by a person residing in or on the rented unit.

(4)A deposit referred to in subsection (3) shall not exceed one month's rent charged for the unit.

(5)The owner of a residental unit shall give the corporation written notice of the name of the tenant residing in or on the unit within 20 days from the commencement of the tenancy.

(6)Within 20 days of ceasing to rent his residential unit, the owner shall give the corporation written notice that his unit is no longer rented.

(7)A corporation shall, within 20 days of receiving written notice under subsection (6),

(a) return the deposit to the owner,

(b) if the corporation has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner

(i) a statement of account showing the amount used, and

(ii)the balance of the deposit not used, if any,

or

(c) if the corporation is entitled to make use of the deposit but is unable to determine the amount of the deposit that it will use, deliver to the owner an estimated statement of account showing the amount it intends to use and, within 60 days after delivering to the owner the estimated statement of account, deliver to the owner

(i) a final statement of account showing the amounts used, and

(ii)the balance of the deposit not used, if any,

45(1)The corporation may give a tenant renting a residential unit a notice to give up possession of that unit, if a person residing in or on that unit

(a) causes damage, other than normal wear and tear, to the real or personal property of the corporation or to the common property, or

(b) contravenes a by-law.

(2)When the corporation gives a tenant a notice under subsection (1),

(a) the tenant shall give up possession of the residential unit, and

(b) notwithstanding the Landlord and Tenant Act or anything contained in the tenancy agreement between the tenant and his landlord, the tenancy agreement terminates on the last day of the month immediately following the month in which the notice is served on the tenant.

(3)A notice given under subsection (1) shall be served on the tenant and his landlord. RSA 1980 cC-22 s45; 1983 c71 s15

46(1)If a tenant is given notice under section 45 (1) and does not give up possession, the corporation or the landlord may apply by originating notice to the Court for an order requiring the tenant to give up possession of the residential unit.

(2)An originating notice under this section shall be served on the tenant and his landlord not less than 3 days, exclusive of holidays and Saturdays, before the day named in the notice for the hearing of the application.

(3)The application of the corporation shall be supported by an affidavit

(a) establishing service of the notice under section 45 to give up possession,

(b) stating the reasons for giving the tenant a notice to give up possession,

(c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure,and

(d) stating any other relevant facts.

(4)On hearing the application the Court may order the tenant to give up possession of the residential unit by a date specified in the order and make any other order that it considers proper in the circumstances.

(5)If the corporation is granted an order under subsection (4), it shall serve a copy of that order on the landlord. RSA 1980 cC-22 s46

47(1)If a person residing in or on a residential unit that is being rented

(a) has caused or is causing excessive damage to the real or personal property of the corporation or to the common property, or

(b) is a danger to or is intimidating persons who are residing in or on the other residential units located on the parcel, the corporation may, notwithstanding that the tenant renting that residential unit has or has not been given a notice to give up possession of that residential unit under section 45 or by the landlord under the tenancy agreement, apply by originating notice to the Court for an order requiring the tenant to give up immediate possession of that residential unit.

(2)An originating notice under this seciton shall be served on the tenant and his landlord not less that 3 days, exclusive of holidays and Saturdays, before the day named in the notice for the hearing of the application.

(3)The application of the corporation shall be supported by an affidavit

(a) setting forth

(i) the damage to the real or personal property of the corporation or the common property, and

(ii)the nature of the danger to or intimidation of persons residing in or on the other residential units,

or either of them, and

(b) stating any other relevant facts.

(4)On hearing the application, the Court may make an order

(a) requiring the tenant to give up possession of the residential unit, if the Court is satisfied that

(i) a person residing in or on that residential unit has caused or is causing excessive damage to the real or personal property of the corporation or the common property or is a danger to or is intimidating persons residing in or on the other units,

and

(ii)there are reasonable and probable grounds to believe that further damage may be done or that the danger or intimidation will not cease if the tenant is allowed to remain in possession of the rented unit.

and

(b) fixing the day on which the tenant is required to give up possesion of the rented unit,

and make any other order that it considers proper in the circumstances.

(5)The tenancy agreement between the tenant and the landlord terminates on the day that the tenant is required to give up possession of the unit pursuant to an order made under subsection (4).

(6)The corporation shall serve a copy of an order made under subsection (4) on the landlord. RSA 1980 cC-22 s47; 1983 c71 s16

48(1)A corporation shall not

(a)impose or collect deposits under section 44,

(b)give notices to give up possession of residential units under section 45, or

(c)make applications to the Court under section 46 or 47,

unless it is authorized by by-law to do so.

(2)A by-law referred to in subsection (1) may be general or specific in its application.

The Owners: Condominium Plan No.
(Condominium Corporation)
c/o
Edmonton, Alberta

______ of ________ 19___

NOTICE TO VACATE

TO: The Tenants and Occupiers of
Unit ____, Plan No.
_________________________ (municipal address)
Edmonton, Alberta

TAKE NOTICE that pursuant to By-Laws 9(g) and 15(e) of The Owners: Condominium Plan No.__________________ (Condominium Corporation) and Section 45(2) of The Condominium Property Act of Alberta, you are hereby required to give up possession of Unit _____ Condominium Plan __________, municipally located at _________________________, Edmonton, Alberta on the last day of the month immediately following the month in which this Notice is based on your breach of the Condominium Corporation's By-Laws and Section 45(1) (a) of The Condominium Property Act.

KINDLY GOVERN YOURSELF ACCORDINGLY.

THE OWNERS: CONDOMINIUM PLAN ______
PER:______________________
PER:______________________

8.8 LIABILITIES OF BOARD MEMBERS

(a) Generally no salary, no perks, no prestige, no financial rewards but these facts don't reduce Board Member liability.

(b) Minimization of liability exposure is essential, particularly if no offsetting financial reward.

(c) Section 30 - Administration of common property, repair and maintenance obligations, technical audits and reserve fund studies.

(d) Responsibilities of office - Act and By-Law compliance, general meeting directives, insurance, reserves, estoppel certificates, accounting and audits, disclosure, communication, convening meetings.

(e) Fair and equal treatment of all unit owners (tenants) - Objectivity - Optional Powers in by-laws-interest,insurance, tenancy prosecutions, Section 29 recoveries.

(f) Acting honestly and in good faith, Act-Section 23(4) and by-laws protective clauses

(g) Conflict of interest-profit motive-complicity-horizon case

(h) Best interest of Corporation as a whole investment limitations

(i) Trustee-fiduciary nature of performance-degree of skill

(j) Mala Fides, dishonesty, fraud

(k) Private law suits

(l) Section 71 fines

(m) Directors E & O insurance-fraud and dishonesty exceptions-subrogation

(n) By-Laws Indemnity

(o) Becoming a well informed Board Member - common sense

(p) Limitations on activities of Board - "ultra vires" concept

8.9 BY-LAW ENFORCEMENT

(a) Duty of Board to enforce and repair and maintain common property-Section 30

(b) Section 20(3)(a)-suits for damage to common property; by-laws-repair and costs recovery, exclusive use area denial, common property control (pets, parking); Tenancies - Sections 44 - 48.

(c) Section 26(5)-Enforcement of by-laws as a contract

(d) Small claims court proceedings under Section 29 and problem areas (no injunctive or specific performance relief, technical problems)-Lakusta case-preparing effectively - -appeals

(e) Practical approaches -staying out of court - arbitration - commissioners

(f) Assistance of City Police - parking and noise problems

(g) Private removal of cars and other improperly stored personal property - improper enforcement -limitations

(h) Common property alterations by unit owners - strict enforcement or "turning the other eye"

(i) By-laws revisions optional and other powers

(j) Even and equal enforcement of by-laws against all owners and tenants dealing with tenants and absentee landlords

(k) No favouritism to board members

(l) Newsletter reminders of key by-law provisions

(m) Recognizing individuality - the idiot component

(n) Internal fining procedures

(o) By-law breach information retention - file - estoppel certificate

(p) When to contact a lawyer - as infrequently as possible

(q) Updating and improving by-laws - drafting by board member,checking by lawyer, summary of changes, communication with mortgagee

(r) Resulting increase in property values (location, standard of maintenance, financial status, quality of construction).

8.10 FEES COLLECTION - CAVEAT PRIORITY

(a) Internal administrative procedures

(b) By-laws acceleration provision - CMHC position

(c) Option to charge interest - By-law provision - Section 32

(d) Caveat filing and caveat discharges

(e) Recovery of colleciton and legal charges - Section 34

(f) Voting restriction - arrears - by-laws

(g) Estoppel certificates

(h) Special assessments

(i) Fees arrears Caveats - form, priority, notice to mortgagee

(j) Legal action for fees arrears - Section 31(1)(d) - equity interest

(k) Party liable for arrears - Section 31(2)

(l) Foreclosing the fees arrears caveat as a Mortgage - Section 31(6)

(m) Fees payment by-law breach - Section 29 penalty option

(n) Condominium caveat and mortgage foreclosure problems

1. Central and Eastern Trust Company v Borland
2. Greenacres Homes Ltd. case
3. Adler, Furman & Associates Ltd. case
4. The Toronto Dominion Bank v MacGillivray & Noga
5. Renfrew House Condominium Corp v CIBC
6. Development of jurisprudence - Masters Funduk and Quinn - local Masters - requirement of full trial
7. Local mortgagee position
8. The position at equity
9. Refiling caveat - land title restriction
10. Act revisions re indeterminate caveat amount, timing, priority
11. The Ontario position - British Columbia

(o) Duty to notify mortgagee of arrears - by-law requirements and breach - responsible for loss occasioned by your failure to notify - mirth position - bad debts reserves.

8.11 THE EMERGING LAW OF CONDOMINIUMS, COOPERATIVES AND HOMEOWNER ASSOCIATIONS

COURT HOLDS CONDOMINIUM ASSOCIATION LIABLE TO TENANT ASSAULTED BY THIRD PARTY

ASSOCIATION OPERATIONS: A California Court of Appeal finds an association to have the same duties as a landlord where it controls the common areas, assists the owners in renting their units and makes representations as to the safety of the common areas.

The plaintiff in this case was a tenant who leased a unit in a California condominium. She alleged that the owner of the unit, who happened to be a member of the board of directors of the association, had represented to her that the condominium was fully secure, safe and controlled by security personnel 24 hours a day: that it was a modern, full-security type complex designed to provide maximum security: and that the parking areas were protected by "a modern key-entry only security gate." The plaintiff was robbed and raped in the condominium parking facility after her assailants apparently gained access through a defective security gate. She sought recovery from the association on theories of fraud and negligence.

The California Court of Appeals held that the plaintiff's injuries were unforseeable and it was not necessary for the plaintiff to show that there were prior identical or similar criminal acts on the condominium property to recover from her injuries.

Analogizing that a landlord has a duty to anticipate an unreasonable and avoidable risk of serious harm to its tenant, the Court found that the association in this case had a similar duty. The defendant association assisted and represented the various owners of the condominium units in renting their units, regulated the owners' use of the condominium property, and provided security and safety for the occupants of the condominium. As the final arbiter of the common area, the association might reasonably be labeled a "de facto" landlord, according to the Court, creating a fiduciary relationship between the association and the individual owners.

Even though there was no evidence that the association had prior notice of assaults, rapes and robberies in the general area, the court found that anticipation of violent crime in and around the condominium was reasonable, if not inescapable, and thus found the association liable to the tenant for the criminal acts of third parties on the condominium property.

8.12 ASSOCIATION HAS DUTY TO PROTECT RESIDENTS FROM A FORESEEABLE RISK OF CRIME

Risks and Liabilities: An Association has a duty to take reasonable measures to protect homeowners from a risk of crime.

The California Court of Appeal recently held that an association has a duty to take reasonable measures to protect resident homeowners from a foreseeable risk of crime.

The Village Green Condominium Project ("Village Green") is a 64 acre complex containing over 600 condominium units. The Village Green

Owners Association is responsible for managing the project and for maintaining the common areas.

Throughout 1980, Village Green was subject to an "exceptional" crime wave which included car thefts, purse snatchings and burglaries. Village Green's residents were very concerned with security and the newsletters circulated by the Association were full of helpful hints on how to prevent crime. In the early part of 1980, the Association evaluated the lighting needs and available options for a major lighting improvement within the community in an effort to deter crime. This evaluation was entrusted to the Architectural Guidelines Committee.

During April, 1980, Plaintiff's home was burglarized. The plaintiff, Francis Troy, asserted that the burglary would not have occurred had there been adequate lighting around her unit and she made her feelings known in the Association's newsletter.

On May 24, 1980, Troy and her neighbors held a meeting to discuss various problems, including the lack of lighting. As a result of this meeting, on June 12, 1980, Troy transmitted a formal request to the Association's manager on behalf of her neighbors that more lighting be installed in the area as soon as possible.

Troy did not receive any response to her request so she submitted a follow-up memo approximately two months later. The Association, however, still did not respond to her request. In the latter part of August, 1980, Troy decided to take matters into her own hands and she installed exterior lighting around her unit.

In a letter dated August 29, 1980, the site manager for Village Green informed Troy that the additional lighting was a violation of the Covenants, Conditions and Restrictions for the Association and she would have to remove the additional lighting. When she refused to remove the lighting, the Board informed her that she would have to remove the lighting by October 6, 1980, or the Association would have it removed and would bill her for the costs.

Additionally, Troy was told by the site manager that she could not use the lights pending their removal. Since the lights were installed on the building circuits and used the same switches, not using the additional lights meant using no exterior lights at all. Nevertheless, on October 8, 1980, Troy complied with the manager's request thereby leaving her unit without any exterior lighting. That night an intruder entered her unit and molested, raped and robbed her.

Troy subsequently brought suit against the Association for the events of October 8,1980. Her suit was premised on three causes of action: negligence, breach of contract and breach of fiduciary duty. In the first cause of action for negligence, the Plaintiff asserted that Defendants were on notice of the crimes occurring in the community and knew that additional lighting would deter crime but nonetheless "negligently and carelessly failed to reasonably carry (the lighting) investigation forward and to propose to the members of the Association what alternatives were available, at what costs, to improve the project's lighting condition." The second and third causes for action, for breach of contract and breach of fiduciary duty, alleged that the Defendants were obligated to take steps to remedy the lighting situation and that the Defendants should have refrained from forcing Troy to remove the additional lighting which she had installed.

The trial court ordered that the case be dismissed on all counts without leave for the Plaintiff to amend.

In reversing the trial court's holding, the California Court of Appeal held that Troy stated a cause of action for negligence. The Defendants had argued that the Association had no duty to her to increase the lighting in her area. In analyzing this issue, the court noted that there were no reported California cases dealing with the liability of a condominium homeowners association and/or individual directors in a situation such as that in the instant case, but that an analogy could be drawn to landlord/tenant cases involving similar facts.

In these cases, if the Plaintiff's injuries were foreseeable, then the Defendant landlord was held liable for these reasonably foreseeable injuries. However, if the Plaintiff's alleged injury was not reasonably foreseeable, then the Defendant landlord was absolved of liability.

In applying this foreseeability test to the facts of the case, the court found it persuasive that the Association was aware of a "crime wave" in the community, that the Board knew that Troy's unit had been burglarized and that the Board had recognized that additional lighting would help deter crime. The court further noted that even though prior rape had not occurred within the community, such a crime could nevertheless be foreseeable since "foreseeability does not require prior identical or even similar events."

The Defendants also asserted that Troy's claim was too speculative since she could not prove that her injury was proximately caused by their failure to install additional lighting and in any event it would be impossible to determine how much additional lighting would have been "adequate." The court however, found this argument unpersuasive since the Association had previously decided that additional lighting was needed and steps had already been taken to install the needed lighting. The court further held that a jury must decide whether the Association proceeded with the lighting investigation in a timely manner.

The court then stated that the "fundamental issue here is whether respondents (Defendants), the condominium homeowners association and its individual directors, occupied the same position as a landlord in the traditional landlord/tenant relationship." The Defendants argued that since the Association has limited funds and cannot significantly increase its budget without the approval of a majority of the Association members, it is not considered a landlord in the traditional sense. The court rejected this argument and stated that the Association and its Board of Directors are the parties entrusted to maintain and secure the common areas of the project. The court also noted that the Association performs all the customary business functions which in the traditional landlord/tenant relationship rest on the landlord's shoulders. Consequently the court concluded that the Association and its Board of Directors are, for all practical purposes, the community's "landlord."

The court therefore held that since Troy's cause of action based on negligence alleged that the Defendants had a duty to her to take reasonable measures to protect her from the foreseeable risk of crime, she stated a valid cause of action. The court noted that "the existence of the most important factor, foreseeability, was alleged. Defendants allegedly knew of the past assaults and of conditions making future attacks likely. By not acting affirmatively to protect Troy they increased the likelihood that she would also be a victim. This failure to act, either by warning her or by providing adequate security, allegedly created a risk of injury to appellant" The court further found that since Troy alleged that Defendants' failure to act in a timely manner was a breach of that duty, and that this breach was a proximate cause of her injury, she had set forth a valid cause of action.

The court however, affirmed the trial court's dismissal of Troy's cause of action based upon breach on contract. The court recognized that the Defendants' "contractual obligation" was not breached by forcing her to remove the lighting which she had installed without the written consent of the Board since such action constituted an architectural violation. In fact, the court implied that if the Board failed to take steps to remedy the architectural violation it would have violated its fiduciary duty.

In closing, the court noted that Troy did not state a cause of action based upon a breach of fiduciary duty since the Plaintiff did not allege that the Defendants failed to act in good faith or that the Defendants had a conflict of interest. In fact, the court noted that the Plaintiff only claimed that the Board acted too slowly. This allegation by itself, is not sufficient to support a cause of action for breach of fiduciary dity.

8.13 **CASES**

ACTION NO. 8203-19588

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

THE OWNERS: CONDOMINIUM PLAN 752 1169

PLAINTIFF

(APPELLANT)

-and-

JOHN R. LAKUSTA HOLDINGS LTD.

DEFENDANT

(RESPONDENT)

REASONS FOR JUDGEMENT

OF

THE HONOURABLE MR. JUSTICE H.S. ROWBOTHAM

This is an appeal from a judgement of the Small Claims Division of the Provincial Court dated the 17th day of May, 1982 arising out of an alleged breach by the defendant of the plaintiff's by-laws and of the provisions of the Condominium Property Act RSA 1980 Chap. C-22. (formerly RSA 1970 Chap. 62) hereinafter referred to as "the Act".

The Appellant cites its by-laws, establishes their lawful and proper enactment and registration, and alleges that the Respondent, being an owner of one of the condominium units, is in breach of the by-laws and the Act because it rented its unit and then refused and neglected to supply rental information to the plaintiff as he is required to do pursuant to the by-laws and the Act.

The learned Provincial Court Judge dismissed the plaintiff's claim on the grounds that he lacked jurisdiction to adjudicate it. He suggested in his reasons that the only and proper course of action open to the plaintiff was by way of prosecution pursuant to Section 71 of the Act (formerly Section 47)

Section 47 of the old Act read:

47(1) A person who fails to comply with section 8.1 (1) or (5), 8.2 or 10.1 is guilty of an offence and liable upon summary conviction to a fine of not more than $2000.00.

(2) Subject to subsection (1), a person who fails to comply with this Act is guilty of an offence and liable on summary conviction to a fine of not more that $500.00.

(3) If a corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and liable on summary conviction to a fine of not more than $500.00.

Section 71 of the new Act reads:

71(1) A person who fails to comply with section 9(1) or (5), 10 or 16 is guilty of an offence and liable to a fine of not more than $2000.00.

(2) Subject to subsection (1), a person who fails to comply with this Act is guilty of an offence and liable to a fine of not more than $500.00.

(3) If a corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and liable to a fine of not more than $500.00.

A comparison between the old section and the new one which replaces it reveals that, except for the changed references to changed section numbers in the new section and the provision of the words "upon summary convictions", they are essentially the same.

The appellant advanced its claim pursuant to what is now section 29 (1) of the Act. Section 29, in its entirety, reads as follows:

29(1) If an owner, tenant or other person residing in a residential unit contravenes a by-law, the corporation may take proceedings under Part 4 of the Provincial Court Act to recover from the owner or tenant or both a penalty of not more than $200.00 in respect of that contravention.

(2) In an action under subsection (1), the corporation must establish to the satisfaction of the provincial judge hearing the matter that

(a) the by-law was properly enacted,

and

(b) the by-law was contravened by the owner, tenant or other person residing in the residential unit.

(3) On hearing the matter, the provincial judge may

(a)give judgement against the defendant in the amount being sued for or any lesser amount as appears proper in the circumstances, or

(b)dismiss the action, and make an award as to costs as appears proper in the circumstances.

(4)A corporation may not commence an action under this section unless it is authorized by by-law to do so.

The appellant has met the requirements of subsections (2) (4) and (5) of section 29 and contends that the Statute gives it a choice of remedies for the enforcement of its by-laws and I agree.

The learned Provincial Court Judge was in error in holding that he was without jurisdiction because the plaintiff had incorporated section 27.1 as part of its by-laws and in doing so was not entitled to seek an alternative remedy in the Small Claims Division as provided for in Section 29(1) of the Act. He held that the plaintiff must only proceed by way of prosecution pursuant to Section 27, which he considered the legislature intended to make complete in itself to the exclusion of any other remedies made available to the plaintiff by the Statute and by-laws.

The appeal is allowed, the plaintiff is awarded the sum of $200.00 by way of penalty pursuant to section 29(1) of the Act together with the appropriate costs in the Small Claims Division of the Provincial Court and solicitor client costs in this appeal in accordance with the Rules of Court.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRUCT OF CALGARY

BETWEEN

THE OWNERS: CONDOMINIUM PLAN NUMBER 801 0427

PLAINTIFF

and

CO OP CENTRE CREDIT UNION LIMITED

DEFENDANT

BEFORE THE HONOURABLE) AT THE COURT HOUSE,
MR. JUSTICE W.R. BRENNAN) CALGARY, ALBERTA, ON
IN CHAMBERS) TUESDAY, THE 30TH DAY OF
) APRIL, A.D. 1985.

ORDER

UPON THE APPLICATION of the Plaintiff by its counsel by way of special case, under which terms all material facts had been agreed to; AND UPON HEARING READ the special case; AND UPON HEARING what was alleged by counsel for the Defendant;

AND UPON THIS COURT finding that to comply with Section 31 of the Condominium Property Act, the Plaintiff must levy individual contributions against each and every unit holder rather than passing a resolution on a blanket basis, so as to enable each unit holder to be advised of the exact amount of his contribution without the necessity of further mathematical calculations and; in addition, that such resolution shall also state the terms pursuant to which such contribution is payable:

IT IS HEREBY ORDEREC AND DIRECTED THAT:

1. The action of the Plaintiff herein be dismissed;

2. The caveat filed by the Plaintiff is hereby declared to have been improperly filed.

SPECIAL CASE

1. The Plaintiff and the Defendant concur in stating the following special case for the opinion of the Court pursuant to Rule 232.

2. The Plaintiff and the Defendant, pursuant to Rule 231, admit the facts as set out herein to be true facts for the purpose of the within application.

3. The Plaintiff is a body corporate pursuant to s.20 of the Condominium Property Act (the "Act"), R.S.A. 1980 ch.C-31 as amended.

4. Co op Centre Credit Union is a credit union established pursuant to the Credit Union Act R.S.A., 1980 ch.C-31 as amended.

5. On or about December 22, 1983, Acron Holdings Ltd. became the registered owners of those lands and premises legally described as:

CONDOMINIUM PLAN CALGARY 801 0427
UNIT 24
AND 129 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE
COMMON PROPERTY.
EXCEPTING THEREOUT ALL MINES AND MINERALS

which lands were registered in the South Alberta Land Registration District on Certificate of Title Number 831232386. The said lands are hereinafter referred to as "The Unit".

6. At all times material hereto the Amended Bylaws of The Owners: Condominium Plan Number 801 0427, which Amended Bylaws are registered in the South Alberta Land Registration District as Instrument Number 801058459 (hereinafter "the By-Laws") were the Bylaws of the Plaintiff as defined in the Act. A true copy of the By-laws are annexed hereto as Schedule "A".

7. The amount claimed by the Plaintiff is as follows:

Arrears of Contributions as at Nov. 30/84	$784.48
Arrears of Interest as at Nov. 30/84	89.16
plus costs on a solicitor/client basis	
TOTAL	$873.64

8. Arcon Holdings Ltd. failed to pay the above claimed contributions and interest.

9. The Defendant became second mortgagee pursuant to a $16,460.00 mortgage dated March 9, 1982 registered against title to the Unit on December 12, 1982 as Instrument No. 821043367. This mortgage was extended March 16, 1983. As a result of default in payments of this mortgage, the Defendant commenced an action in foreclosure against Arcon Holdings Ltd. being Alberta Court of Queen's Bench Action #8401-03174. This foreclosure which was granted on June 12, 1984. The defendant became the registered owner of the Unit pursuant thereto on July 20, 1984 as evidenced by Certificate of Title Number 841124149 which document is registered in the South Alberta Land Registration District.

10. The plaintiff requested that the Defendant, as registered owner of the property pay the condominium arrears as set out in Paragraph 7.

11. On October 30, 1984 the Plaintiff caused caveat #841178409 to be registered against the Unit pursuant to Resolution of the Board of Plaintiff passed on October 17, 1984 and annexed hereto as Schedule "B".

12. Coop Centre Credit Union requested that the Plaintiff provide the condominium resolution required pursuant to s.31 (2) of the Act which sets the condominium assessments and directs that they be paid.

13. The Plaintiff provided to Coop Centre Credit Union the resolution passed February 8, 1984 against the Unit for outstanding condominium fees. A true copy of this Resolution is annexed hereto as Schedule "C".

The Plaintiff also provided the Defendant with the minutes of a Board meeting of March 14, 1984 at which time the budget for the Condominium Corporation was set by the Board of Managers. A true copy of this Resolution is annexed hereto as Schedule "C". A true copy of these minutes is annexed hereto as Schedule "D". There were no other documents provided to the Defendant.

14. The questions for the opinion of this Honourable Court are:

(a) Do Schedules B, C, or D represent proper resolutions as required under s.31 (2) of the Act?

(b) If Schedules B, C or D do not constitute proper resolutions passed in compliance with s.31 (2), is the Defendant obliged to pay the condominium arrears set out in Paragraph 7?

(c) If there was no contribution properly levied against Coop Centre Credit Union did the Plaintiff have the right to file a caveat pursuant to s.31 (4)?

(d) If the caveat was improperly filed, is Coop Centre Credit Union entitled to damages as claimed in their counterclaim?

(e) If Schedules B, C, or D do not consitiute proper resolutions in accordance with s.31 (2) of the Act, what form would be sufficient to satisfy that section?

OWNERS: CONDOMINIUM PLAN NO. 762 0990 V PIRIE

Queen's Bench, Funduk, Master (in Chambers)

Judgment - August 31, 1982.

Real property - Condominiums - Condominium Corporation seeking order for possession of rented unit - Contents of Affidavit - Proof of Condominium By-Laws.

Practice - Evidence - Affidavits - Information and belief - Statute requiring affidavit establishing service of notice - Affidavit on information as to service defective - Attestation of personal knowledge of service required.

Where a condominium corporation seeks an order for possession of a rented unit on the basis that the tenant has contravened the condominium by-laws, evidence of the contents of such by-laws must be presented to the Court.

It is not enough to allege that the tenant has "breached numerous bylaws of the Condominium Association on many occasions." Furthermore, where an order for possession is sought, the affidavit of service of the termination notice required under s.46 (3)(a) of the Condominium Property Act cannot be sworn on the basis of information and belief, but must be sworn by the person who actually served the termination notice on the tenant.

31st August 1982. Funduk, Master: - This is an application by the applicant for an order for

possession of premises which the respondent is renting. The owner of the premises is W. Gialet and the respondent is renting the premises from him.

As is apparent from the style of cause the applicant is not the owner, but the condominium corporation.

The relevant legislation is the Condominium Property Act, R.S.A. 1980, c-22, specifically ss.45 and 46, which provide:

45(1) The corporation may give a tenant renting a residential unit a notice to give up possession of that unit, if a person residing in that unit

> (a) causes damages, other than normal wear and tear, to the real or personal property of the corporation or to the common property, or
>
> (b) contravenes a by-law.
>
> (2) When the corporation gives a tenant a notice under subsection (1),
>
> (a) the tenant shall give up possession of the residential unit, and
>
> (b) notwithstanding the Landlord and Tenant Act or anything contained in the tenancy agreement between the tenant and his landlord, the tenancy agreement terminates, on the last day of the month immediately following the month in which the notice is served on the tenant.
>
> (3) A notice given under subsection (1) shall be served on the tenant and his landlord.
>
> 46(1) If a tenant is given notice under section 45(1) and

does not give up possession, the corporation or the landlord may apply by originating notice to the Court for an order requiring the tenant to give up possession of the residential unit.

(2) An originating notice under this section shall be served on the tenant and his landlord not less than 3 days, exclusive of holidays and Saturdays, before the daynamed in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

(a) establishing service of the notice under section 45 to give up possession,

(b) stating reasons for giving the tenant a notice to give up possession.

(c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure, and

(d) stating any other relevant facts.

(4) On hearing the application the Court may order the tenant to give up possession of the residential unit by a date specified in the order and make any other order that it considers proper in the circumstances.

(5) If the corporation is granted an order under subsection (4), it shall serve a copy of that order on the landlord.

Both the owner and the respondent appeared on the application and contested it.

The only evidence in support of the application is an affidavit by one Michael Morin, who deposes he is a member of the board of the applicant. The substantive part of Morin's evidence is as follows:

1. That Doreen Pirie is residing in Unit #82, a residential unit that is being rented from the owner of that unit, W. Gialet.

2. Pursuant to section 45 of the Condominium Property Act, Doreen Pirie was served with a notice to give up possession of Unit #82 because she had contravened a bylaw of the Condominium Association. I am advised by the President of the Condominium Association, John Fyvie, that he served both Doreen Pirie and W. Gialet by double registered mail with the said notice.

3. That Doreen Pirie has breached numerous bylaws of the Condominium Association on many occasions, but the notice referred only to her breach of the bylaw stating that pets are permitted in a Unit only with approval of the Board.

4. That Doreen Pirie has refused and failed to give up possession of the unit and refuses to abide by the rules of the Condominium Association.

5. That this tenant is making life miserable for the rest of the owners of the condominium and I feel it is essential that Doreen Pirie move out of her unit to end the innumerable and recurring problems.

6. That I make this Affidavit in support of an application for an Order fixing a date on which Dorren Pirie is required to give up possession of Unit #82.

The burden is on the applicant to show that it is entitled to an order for possession. It must show, on a balance of probabilities, that the tenancy has been terminated. The evidence falls far short of that.

The by-law which the respondent allegedly breached was not put in evidence. All that exists is Morin's evidence that there is such a by-law. That is not sufficient. Whatever by-law there might be that the applicant relies on, its interpretation is for the court, not Morin, to decide. The court is being asked to accept Morin's word that there is a by-law and that it covers the activity complained of.

The court cannot take judicial notice of the by-law. The act does not so provide. The applicant must prove the by-law. Once it has done that, its contents (interpretation) is for the court to decide.

There is no other legislation that I am aware of which allows the court to take judicial notice of by-laws by a condominium corporation.

In certain circumstances there may by "prima facie proof" of the by-law: s.29(5). However, that section has no application to the proceedings before me.

I also find that there is no evidence proving service of the notice required to be served under s. 45.

In St. Dennis v. Trumbley (1977), 3 Alta. L.R. (2d) 193, 4 A.R. 212 (C.A.), McDermid J.A., speaking for the court, indicates that even where a proceeding is pursuant to a statute, the Rules of Court will apply unless the rules to be applied are contrary to any provision of the statute or it would not be practicable to apply the rules.

It would not be contrary to the Act to apply R. 305 and it would not be impracticable to apply R. 305.

In my view, this application is not an interlocutory motion, so R. 305 (3) cannot apply. Belief with the source and grounds thereof (commingly called "information and belief") is not admissable: Alta. Agricultural Dev. Corp. v. Wanapel Co-op. Ltd. (1978), 27 C.B.R. (N.S.) 87, 11 A.R. 573 (C.A.); ReKelner (1973), 3 O.R. (2d) 298, 14 R.F.L. 252 (H.C.); Cadillac Exploration Ltd. v. Penarroya Can. Ltee (1972), 30 D.L.R. (3d) 326 (N.W.T. Terr. Ct.); Brown v. Dunning (1959), 28 W.W.R. 270 (Alta. D.C.); Edmonton v. Riemer (1979), 10 Alta. L.R. (2d) 92 (D.C.).

It is clear from para. 3 of Morin's affidavit that he does not have personal knowledge of service of the notice upon the respondent and the owner. He relies upon what he was told by someone else. That is hearsay. It is not admissible on a substantive motion. It must be disregarded: Re Erinco Homes Ltd. (1977), 3 C.P.C. 227 (Ont. S.C.).

Disregarding para. 5 of Morin's affidavit means there is no evidence of service of the notice upon the the respondent and the owner. Section 46(3) of the Act requires evidence, by way of affidavit, establishing service of the notice required by s. 45.

Even if R.305(3) applied, the evidence of Morin is still fatally defective. What subr. (3) allows is belief within the grounds and source for such belief. Paragraph 5 is not belief. It is solely the "information" part of "information and belief".

In N.B. v Carleton Enterprises Ltd. (1973), 8 N.B.R. (2d) 19 (Q.B.), Stevenson J. states at p.21:

Paragraph 4 of Mr. Rouse's affidavit states that he is informed by one Ivan O'Leary of the Highways Department that the defendant has constructed the access roads complained of without the permission of the Minister of Highways. Such a statement is pure hearsay. Under Order 38, Rule 4, on an interlocutory application a deponent may make statements as to his belief, with the grounds thereof. While Mr. Rouse gave the source of his information he did not state that he believed the information he received. To be admissible under the rule the deponent must state both his belief and his source. See McDowell v. Green (1924), 52 N.B.R. 114 (C.A.). If the deponent states only the information he has received from another without a statement of his belief it is nought but heresay. An affidavit of mere heresay ought not to be put on the files of the court. In Re Holstead (1881), 20 N.B.R. 512.

See also Robertson v. Wright (1957), 23 W.W.R. 705, affirmed 26 W.W.R. 337, 16 D.L.R. (2d) 364 (Sask. C.A.), to the same effect.

Neither the respondent not the owner admit that service of the notice was effected on them. A copy of the alleged notice has not been placed in evidence, so even if there is a notice, what its contents are is uncertain.

The application is dismissed.

RECOVERY OF COSTS

The corporation may recover from an owner by an action for debt in any Court of competent jurisdiction any sum of money, including its costs on a solicitor and his client basis, which the Corporation is required to expend as a result of any act or ommission by an owner, his servants, agents, licences, invitees or tenants which violates these by-laws or any rules or regulations established pursuant to these by-laws and there shall be added to any judgment all costs of such action including the Corporation's legal costs as between solicitor and his client. Nothing herein shall deemed to limit any right of any owner to bring an action or proceeding for the enforcement and protection of his rights and the exercise of his remedies.

BY-LAW ADDITION

An owner who is renting his unit and falls in arrears in Condominium Fee Assessments, the Corporation may serve demand upon the tenant for all arrears.

The tenant upon receipt of demand from the Corporation shall pay the outstanding arrears, and notwithstanding any regulations in the Alberta Landlord and Tenant Act, the amount of arrears paid to the Condominium Corporation shall be considered as rent paid to the owner.

9.0 DIRECTOR'S CHECKLIST

DO I MEASURE UP?

A CONDO DIRECTOR'S CHECK LIST

1. Am I willing to work cohesively with other members?

   YES ☐ NO ☐ MAYBE ☐

2. Am I sensitive to community problems?

   YES ☐ NO ☐ MAYBE ☐

3. Do I listen to owners' new and fresh ideas and try to implement them when possible?

   YES ☐ NO ☐ MAYBE ☐

4. Am I willing to give up personal time to serve the Board and Community?

   YES ☐ NO ☐ MAYBE ☐

5. Do I have a greater than average amount of energy to serve the unit owners?

   YES ☐ NO ☐ MAYBE ☐

6. Am I able to choose the fundamental over the superfluous?

   YES ☐ NO ☐ MAYBE ☐

7. Am I able to persevere in spite of opposition?

   YES ☐ NO ☐ MAYBE ☐

8. Am I able to negotiate workable compromise?

   YES ☐ NO ☐ MAYBE ☐

9. Can I objectively evaluate my own ideas?

   YES ☐ NO ☐ MAYBE ☐

10. Am I willing to set personalities aside and work for the best interest of the unit owners?

    YES ☐ NO ☐ MAYBE ☐

11. Am I willing to stand alone when integrity demands it?

    YES ☐ NO ☐ MAYBE ☐

12. Am I able to avoid blaming others when the mistake was mine?

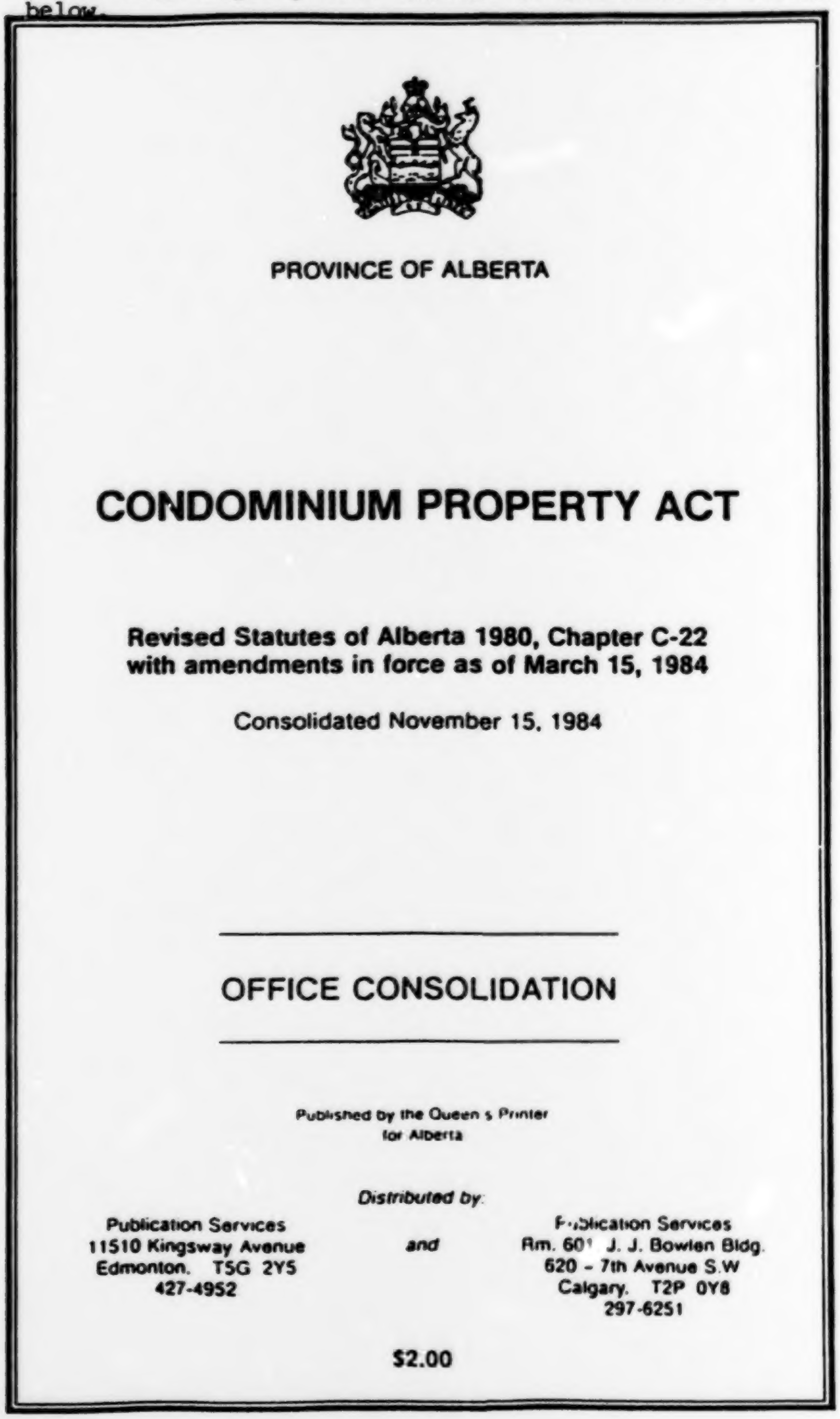
    YES ☐ NO ☐ MAYBE ☐

Eight and over - good; Five and over - think about it;
Less than five - support someone else.

10.0 CONDOMINIUM PROPERTY ACT

10.0 Alberta Condominium Property Act

Each Board of Managers should obtain a copy of the Alberta Condominium Property Act. The Act is available at the address below.



PROVINCE OF ALBERTA

CONDOMINIUM PROPERTY ACT

Revised Statutes of Alberta 1980, Chapter C-22
with amendments in force as of March 15, 1984

Consolidated November 15, 1984

OFFICE CONSOLIDATION

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